U.S. Senate Committee on Environment and Public Works Hearing entitled, "Hearing on the Nomination of Andrew Wheeler to be Administrator of the Environmental Protection Agency" January 16, 2019 Ouestions for the Record for Mr. Andrew Wheeler

Ranking Member Carper:

Your responses to questions for the record from the Committee's August 1, 2018 hearing left much to be desired. Many questions did not receive specific responses, which is troubling given that the Committee did not receive your answers for four months. Please ensure that your responses to these questions are not similarly deficient. Moreover, in light of the Agency's insistence on moving forward quickly with your confirmation hearing and the use of furloughed staff to prepare you for it, please do not attempt to justify a failure to provide any of the responses or requested materials on the shutdown, absent a concurrent request that further action on your nomination be postponed until after the EPA re-opens.

Questions on the Trump Administration's Proposed Fuel Economy and Greenhouse Gas Tailpipe Standards Rollback

I asked you a number of questions on this topic following your testimony at the August 1, 2018 hearing. You failed to provide specific responses. Please do so now promptly, and answer the additional questions, especially in light of your statement at the hearing that "We know that we need to finalize our [fuel economy and greenhouse gas tailpipe standards] proposal by March 30."

- 1. *OAR:* During the development of the "Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-26 Passenger Cars and Light Trucks", EPA officials met with OMB and NHTSA officials to convey their concerns about the proposal several times. They left numerous documents with OMB officials that are now part of the rulemaking docket¹. These documents indicate that there are significant problems with the model that was used by NHTSA to develop the proposal to freeze fuel economy and greenhouse gas tailpipe standards from 2020-26. One such example is a document titled "Email_5_- Email_from_William_Charmley_to_Chandana_Achanta_- June_18, 2018%20(1).pdf". This 122 page long document includes a number of PowerPoint presentations EPA made to OMB and NHTSA staff along with additional documentation and analysis.
 - a. The document notes that "EPA analysis to date shows significant and fundamental flaws in CAFE model (both the CAFE version and the "GHG version").... These flaws make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards." Do you believe that each of these flaws were fully remedied before the rules were proposed? If so, please list the specific remedies that addressed each of EPA's concerns. If not, will you ensure that all necessary technical input

¹ [HYPERLINK "https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453"]

- from EPA's Office of Transportation and Air Quality is incorporated into the final rule in order to ensure that the rule cannot be successfully over-turned in court on grounds that the model on which it is based is significantly or fundamentally flawed?
- b. One of the main contributors to the NHTSA conclusions that the augural standards would cause thousands of additional deaths is NHTSA's "consumer choice" module, which asserts that making the fleet more fuel efficient will cause people to keep their less safe, older vehicles for longer, and that this will mean there are more unsafe vehicles on the road (because newer vehicles have more safety technologies). The document states that EPA believed this NHTSA model was flawed, because it predicts an additional 26 million non-existent vehicles would be in the 2016 fleet and 46 million additional non-existent vehicles in the 2030 fleet. For context, this would represent a 15-20% increase in registered vehicles. The document also notes that this problem appeared to be un-remedied several months after EPA first raised it. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- c. The document also found that NHTSA's consumer choice model predicts an unexplained, and apparently fictitious 10-15% increase in vehicle miles traveled (VMT). Specifically, the model somehow predicts people will drive an extra 239 billion miles in 2016 and 302 billion more miles in 2030. The increased deaths associated with higher efficiency standards in the NHTSA model are highly correlated to VMT (more driving equals more accidents equals more deaths). It would thus seem that EPA believes that the NHTSA safety numbers are predicated on an entirely fictitious driving scenario. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- d. The document also notes that NHTSA does not accurately model the manner in which automobile manufacturers trade credits as part of their compliance strategies, observing that NHTSA does not assume that compliance credits are traded between manufacturers' car and truck fleets (which is the manufacturers' current practice), and that this has the effect of over-estimating compliance costs. Was this modeling problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- e. The document observes that NHTSA's model overestimates the costs of particular technologies compared to their actual costs and use in the real world. The model also reportedly selects the most expensive technology packages to meet the standards, which overestimates the most cost-effective ways to do so by \$1-2,000 per vehicle. Do you agree that manufacturers would be more likely to select the most cost-effective set of technologies with which to meet standards, rather than

- the least cost-effective set of technologies? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- f. The document stated that the NHTSA model omitted the benefits of some fuelefficient technologies entirely, while others were erroneously inputted into the
 model. For example, 'start/stop' technology, a technology that causes engines to
 automatically shut off while vehicles are stopped in traffic (and thus use no fuel),
 is estimated to have a negative effect on fuel-efficiency, which is simply not
 plausible. Were these problems remedied in the proposed rule? If so, how? If not,
 will you ensure that they are remedied before the EPA rule is finalized in order to
 avoid litigation that will result in the rule being overturned on grounds that the
 model on which it is based is significantly or fundamentally flawed?
- g. The document observed that NHTSA's model appears to add vehicle miles travelled in unexplained ways. For example, it observed that as many as 25 billion more miles of driving were predicted in a given year, even when the rebound effect (a measure of how much extra driving consumers are expected to do as a result of having more fuel-efficient vehicles) was set to 0 percent. The document observes that NHTSA's model actually predicts less driving when the rebound effect was set to 20 percent (meaning 20% more driving by consumers in more fuel-efficient vehicles would have been included in the model) than when it was kept to 0 percent. This suggests that NHTSA's model is incapable of predicting anything accurately, separate and apart from whether one agrees with its policy premise. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- h. The document states that NHTSA's "Proposed standards are detrimental to safety, rather than beneficial" once NHTSA's modeling errors were corrected. In fact, EPA found that the proposed standards result in "an average increase of 17 fatalities per year in VYs 2036-2045" relative to the current standards. Do you agree with this conclusion? If not, why not?
- i. The document states that the NHTSA model projects that the current standards result in 8,000 fewer new automobiles sold annually in CYs 2021-2032, but that the used vehicle fleet would grow by 512,000 vehicles per year. That means that for every new fuel-efficient vehicle that consumers do not purchase (because NHTSA predicts their costs will be too high), somehow an additional 60 used vehicles will remain in the fleet. Do you agree that this scenario is simply implausible in the real world, as the EPA document points out? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
- j. In draft comments submitted to OMB on June 29, EPA commented that more than 90% of the net benefits for which the proposed rule to freeze fuel economy and

greenhouse gas tailpipe standards takes credit are in fact benefits associated with vehicles manufactured prior to 2021. EPA attributed this to NHTSA's flawed consumer choice model, and questioned whether these could technically be attributable to the actual post-2021 rule. What would the net benefits of the preferred alternative— and for each of the other seven alternatives included in the NPRM — be if the agencies were to compare the costs to the benefits of cars manufactured within the MY 2021-29 cohort timeframe?

- 2. *OMS/OAR:* Please provide a list of all EPA employees or contractors who have been working on the fuel economy and greenhouse gas tailpipe standards rule since December 29, 2018, including a description of what precisely each individual has been doing and how much time they have spent on each task.
- 3. *OAR:* I have been informed that on July 20, 2018, prior to the finalization and public release of the proposed roll-back, you received a briefing from EPA's career staff that consisted of about 20 slides (and a 3-page appendix) and lasted about an hour. The briefing described EPA career staff's significant concerns with the proposed rule, including their concern that the proposal "does not include EPA's technical assessment or input," that NHTSA failed to incorporate any of EPA's technical analysis or feedback, and that it was clear to EPA that "NHTSA doesn't want to engage EPA on technical aspects of NHTSA's analysis." That briefing also included the staff's request that EPA's logo be removed from the technical analysis document used to support the proposed rollback in light of the fact that no EPA input was included in it.
 - a. Please provide me with a copy of the briefing slides.
 - b. You have repeatedly asserted in both public and private meetings that the proposed rollback will save lives. For example, in your January 16 nominations hearing you stated that "Under our proposal, we have submitted that there will be 1,000 lives saved a year under our CAFE proposal. I neglected to mention that earlier, but I think that is very important for everyone to understand." Please provide me with a detailed explanation for why you have seemingly discounted the views and technical input of EPA's career staff when making these statements.
 - c. In your testimony, you also stated that the proposed rollback "would decrease the cost of a new car by \$2,300." It is my understanding that the briefing you received on July 20, 2018 included a chart showing that NHTSA's per vehicle cost estimates associated with the current standards were more than double EPA's estimates. Please provide me with a detailed explanation for why you have seemingly discounted the views and technical input of EPA's career staff when making these statements.

Questions on EPA's Proposed Mercury and Air Toxics Standards Rollback

4. *OAR:* In EPA's 2018 proposed revision to the Supplemental Cost Finding for the Mercury and Air Toxics Standards, it states that, "while there are unquantifiable HAP [hazardous air pollutant] benefits and significant monetized PM co-benefits associated with MATS, the

Administrator has concluded that the identification of these benefits is not sufficient, in light of the gross imbalance of monetized costs and HAP benefits, to support a finding that is appropriate and necessary to regulate EGUs under CAA section 112."²

- a. The proposed revision state that, "with the MATS rule in place, the estimated inhalation cancer risk to the individual most exposed to actual emissions from the source category is 9-in-1 million." Such a risk is higher than the 1-in-1 million threshold provided in the Clean Air Act as the threshold to delist a source category. Do any documents in the proposal docket estimate what the inhalation cancer risk would be if the MATS rule was rescinded?
- b. The Clean Air Act does not permit the delisting of any source category with emissions that pose a cancer risk greater than 1 in 1,000,000 to the most exposed individual, regardless of the cost. Why does the proposal fail to regulate EGUs under Section 112 which pose a far greater cancer risk?
- c. Given that we already know the inhalation cancer risk is greater than 1 in 1,000,000, and EPA's proposal asserts that this is "not sufficient" to determine it is "appropriate and necessary" to regulate EGUs under Section 112, what would in EPA's view be a "sufficient" cancer risk to deem that it is "appropriate and necessary" to regulate?
- d. How did the agency weigh "unquantifiable HAP benefits" in the proposal's formal cost-benefit analysis to ensure benefits that could not be monetized are not underrepresented?
- e. Please provide detailed information on all the unquantifiable HAP benefits that were considered in this proposal and explain why EPA could not ascribe a dollar value to these benefits.
- 5. *OAR*: If a benefit cannot be monetized, do you consider it to be worth less than a benefit that can be monetized? If so, why? If not, why not?
- 6. *OAR:* When the 1990 Clean Air Act Amendments were written which included the current version of Section 112(n)(1)(A) of the Clean Air Act there were few, if any, quantifiable data available on cancer risks of air toxics and no quantifiable data whatsoever available for non-cancer risks, like birth and neurological defects.³ Despite the inability to put a dollar amount on the benefits of reducing these air toxics, Congress still found it necessary to require EPA to pursue robust regulations to address major sources of air toxics emissions. At the same time, Congress indicated that it was well aware of the limitations of relying exclusively on cost-benefit analysis when assessing air toxics. In the Senate Committee report on S. 1630 in the 101st Congress, it states, "[T]he public health consequences of substances which express their toxic potential only after long periods of chronic exposure

²EPA, "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units -- Reconsideration of Supplemental Finding and Residual Risk and Technology Review" (Dec 2018), [HYPERLINK "https://www.epa.gov/sites/production/files/2018-12/documents/frnmatsfindingandrtr_12_2018wdisc.pdf"]; Hereafter called EPA Revised Supplemental Finding Proposal, 2018.

³ Legislative History 1990 Clean Air Act Amendments, H.Rept 101-490 Part 1, 101st Congress (1989-1990).

will not be given sufficient weight in the regulatory process when they must be balanced against the present day costs of pollution control and its other economic consequences. 4" Yet, in EPA's 2018 proposed revision to the Supplemental Cost Finding for the Mercury and Air Toxics Standards, the agency based the decision to reverse its "appropriate and necessary" finding solely on a formal cost-benefit analysis that does not incorporate this clear Congressional intent.

- a. Where in the 1990 CAA's legislative history does EPA believe that Congress required the agency to conduct a formal cost-benefit analysis to make an "appropriate and necessary" determination? Please provide a citation to the relevant portion of the legislative history.
- b. Do you agree with Congress' assessment that the benefits of reducing air toxics are not given significant weight in a formal cost-benefit analysis because it is difficult, and sometimes impossible, to put a dollar value on the benefits of reducing air toxic emissions? If not, why not? If so, why?
- 7. *OAR:* As mentioned in the previous question, EPA appears to be ignoring Congressional intent when it comes to making "appropriate and necessary" determinations by ignoring the real benefits of reducing exposure to hazardous air pollution, especially those benefits that cannot be monetized. Since EPA is failing to follow the Clean Air Act's requirements, please state what you consider to be a safe level of exposure to a carcinogenic hazardous air pollutant.
- 8. *OAR:* As mentioned in question #6, EPA appears to be ignoring congressional intent when it comes to making "appropriate and necessary" determinations by ignoring the real benefits of reducing exposure to hazardous air pollution, especially those benefits that cannot be monetized. Since EPA is failing to follow the Clean Air Act, please state what you consider to be a safe level of exposure to an acid gas hazardous air pollutant.
- 9. *OAR:* As mentioned in question #6, EPA appears to be ignoring congressional intent when it comes to making "appropriate and necessary" determinations" by ignoring the real benefits of reducing exposure to hazardous air pollution, especially those benefits that cannot be monetized. Since EPA is failing to follow the Clean Air Act, please state what you consider to be a safe level of exposure to a heavy metal hazardous air pollutant?
- 10. *OAR*: EPA's 2018 proposed revision to the Supplemental Cost Finding for the Mercury and Air Toxics Standards claims the proposal does not, "present a disproportionate risk to children.⁵"
 - a. What analysis in the docket shows that rescinding or weakening MATS is not a threat to children's health?
 - b. What analysis in the docket shows that the benefits of reducing mercury exposure to children from our nation's largest source of mercury is "insufficient" to trigger

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⁴ Legislative History 1990 Clean Air Act Amendments, S.Rept 101-228, 101st Congress (1989-1990).

⁵ EPA Revised Supplemental Finding Proposal, 2018.

a determination that it is "appropriate and necessary" to regulate EGUs under Section 112 of the Clean Air Act?

- 11. *OAR*: Are there currently any EGUs that are not compliant with the Mercury and Air Toxics Standards rule? If so please provide me with a list.
- 12. *OAR:* Is EPA aware of any blackouts, brownouts or extreme retail consumer price spikes that occurred as a direct result of the Mercury and Air Toxics Standards rule? If so, please share the analysis that demonstrates the connection of these events with the MATS rule.
- 13. *OAR*: Prior to implementation of the MATS rule, there were more mercury fish consumption advisories in this country than any other chemical or pollutant combined.
 - a. Are there still fish consumption advisories for mercury in this country? If so, please provide copies.
 - b. How many states currently have one or more fish consumption advisories for mercury?
 - c. Do you believe consuming mercury-laden fish poses any risk to pregnant women or their unborn babies in this country? If so, why? If so, what is the risk?
 - d. In the docket for the 2018 proposed revision to the Supplemental Cost Finding for MATS, what data does EPA provide that led you to believe there was not a "sufficient" mercury risk from power plants to deem it "appropriate and necessary" to regulate EGUs under Section 112 of the Clean Air Act?
- 14. *OAR*: In 2011, were coal-fired EGUs the largest source of unregulated mercury pollution in this country? If yes, please include by what order of magnitude coal plants were the largest source over other sources.
- 15. *OAR:* In EPA's 2018 proposed revision to the Supplemental Cost Finding for the Mercury and Air Toxics Standards, the agency is, "soliciting comment, however, on whether the EPA has the authority or obligation to delist EGUs from CAA section 112(c) and rescind (or to rescind without delisting)" the Mercury and Air Toxics Standards (MATS) Rule.⁶
 - a. If the agency decides to delist "EGUs from CAA section 112(c)," which I do not believe it has the authority to do, would EPA have the authority to issue mercury and air toxics standards for the utility sector under Section 112 of the Clean Air Act, and would utilities legally be required to run control technologies to meet MATS?
 - b. If the agency rescinds the MATS rule, which I do not believe EPA has the authority to do, would that not only weaken the standards, but remove them altogether? If MATS is removed, would utilities have any legal responsibility to run currently-implemented control technology used to comply with MATS?

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⁶ EPA Revised Supplemental Finding Proposal, 2018.

- 16. *OAR:* During your confirmation hearing, several members expressed concerns about EPA's 2018 proposed revision to the Supplemental Cost Finding for the Mercury and Air Toxics Standards. During an exchange on this issue with Senator Cardin, you stated that, "on MATS, I don't think you can roll back a regulation that has been fully implemented. And the MATS requirements for the pollution control equipment has been fully implemented. And I don't believe, I honestly do not believe that that equipment will be turned off or removed under our proposal."
 - a. If you "don't think you can roll back a regulation that has been fully implemented" as you stated to Senator Cardin during your confirmation hearing, then why is your agency requesting comment on EPA's authority and potential obligation to delist EGUs from Section 112 of the Clean Air Act and/or rescind the MATS rule?
 - b. Have the courts ever vacated an EPA rule that has been implemented? If yes, which rules, and did it ever result in control technology being uninstalled or turned off?
 - c. Within the revised Supplemental Cost Finding for the Mercury and Air Toxics Standards 2018 proposal, EPA cites that, "[A]gencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation." 7 When you stated to Senator Cardin that you, "don't think you can roll back a regulation that has been fully implemented," did that mean you didn't think the agency could do so legally and if so, how does that sync with the argument made in the proposal that the agency has inherent authority to reconsider past decisions?
 - d. If the courts end up vacating the MATS rule because of EPA's decision to finalize its proposal finding that it is no longer "appropriate and necessary" to regulate under Section 112, would you still stand by your comments to Senator Cardin that you "honestly do not believe that that equipment will be turned off or removed?" If so, legally speaking, what would require utilities to run control technologies currently being used to meet MATS if the MATS rule were to be vacated or rescinded?
 - e. Please list all the section 126 petitions your agency has during this Administration in which petitioners have expressed concerns that a utility upstream is turning off or not optimizing installed air control technologies and as a result is creating ozone transport concerns for downwind states. Please identify which of these petitions were rejected since you became Acting Administrator.
 - f. Are you aware of any situation since you have served at EPA under this Administration, when a utility has turned off or not fully optimized their installed controls? If so, please list and explain all situations.
- 17. *OP/OAR:* OMB has also long recognized the limitations of a formal cost-benefit analysis, especially when benefits cannot be fully monetized. OMB's 2003 Circular A-4 requires EPA and other agencies to conduct a complete regulatory analysis that "includes a discussion of non-quantified as well as quantified benefits and costs. When there are important nonmonetary values at stake, you should also identify them in your analysis so policymakers

⁷ EPA Revised Supplemental Finding Proposal, 2018.

can compare them with the monetary benefits and costs." In addition, OMB clarifies in Circular A-4 that all ancillary benefits should be counted in any rule analysis, directing agencies to "look beyond the direct benefits and direct costs of your rulemaking and consider any important ancillary benefits and countervailing risks. An ancillary benefit is a favorable impact of the rule that is typically unrelated or secondary to the statutory purpose of the rulemaking." OMB also states when an agency, "can estimate the monetary value of some but not all of the ancillary benefits of a regulation, but cannot assign a monetary value to the primary measure of effectiveness, you should subtract the monetary estimate of the ancillary benefits from the gross cost estimate to yield an estimated net cost." Why does EPA believe it not necessary to review all the benefits – including ancillary co-benefits – in EPA's analysis (which is based only in part on the regulatory impact analysis prepared for OMB and responsive to its guidance), that is being used to make its "appropriate and necessary" determination under Section 112(n)(1)(A)? Why are those benefits required to be counted in any other benefit assessment analysis for any other regulatory action, but not proposed to be included here?

- 18. *OAR:* In determining it was no longer "appropriate and necessary" to regulate utilities under Section 112 in EPA's 2018 proposed revision to the Supplemental Cost Finding for the Mercury and Air Toxics Standards
 - a. Did EPA use any data beyond what was included in the 2011 MATS Regulatory Impact Analysis? If so, please describe it. If not, why not?
 - b. Did EPA consider updating the costs estimate to reflect the actual installation and operating costs required to meet MATS or consider accounting for costs already incurred by the utility industry? If so, why was this information not included in the proposal? If not, why not?
 - c. Did EPA consider updating the benefits data to include the best available science? If not, why not? If so, why was this information not included in the proposal?
- 19. *OAR*: Under the George W. Bush Administration, EPA stated that "benefits calculations relying solely on IQ decrements are likely to underestimate the benefits to cognitive functioning of reduced mercury exposures." Do you agree with this statement? If so, why? If not, why not?
- 20. *OAR:* In a recent residual risk proposal, EPA has stated "any reduction in HAP emissions would be expected to provide health benefits in the form of improved air quality and less exposure to potentially harmful chemicals." Does this statement apply to reductions in HAPs for all Section 112 listed source categories, including EGUs? If not, why not? If so, why?

Please list all the acid gases, heavy metals, and other hazardous air pollutants (by name) that are emitted by electric generating units that contribute to particulate matter pollution. If

9 68 FR 58366

^{8 68} FR 58366

¹⁰ EPA, Regulatory Impact Analysis of the Clean Air Mercury Rule, (March 2005) [HYPERLINK

[&]quot;https://www3.epa.gov/airtoxics/utility/ria final.pdf"].

¹¹ 83 FR 46262

reducing these HAPs also reduces particulate matter, wouldn't reducing particulate matter be a direct benefit of the regulation, not a co-benefit?

- 21. *OAR:* In 2003, then-EPA Assistant Administrator for Air and Radiation Jeff Holmstead testified before the House Energy and Commerce Committee on the difficulty of quantifying the benefits of reducing air toxic emissions from power plants, saying: "These estimates [for Clear Skies] do not include the many additional benefits that cannot currently be monetized but are likely to be significant, such as human health benefits from reduced risk of mercury emissions, and ecological benefits from improvements in the health of our forests, lakes, and coastal waters." Is this also true for MATS?
- 22. *OAR*: EPA has tried to bridge the air toxic data gaps to better monetize benefits through various stakeholder workshops over the years. The latest workshop in 2009 concluded that monetizing all air toxic benefits is still not possible, making a cost benefit analysis "difficult" to do for any action involving hazardous air pollutants. Finding that, "[F]or many chemicals on the [Clean Air Act hazardous air pollutant] list, the information on potential health effects is so limited that quantitative benefits analysis is not feasible... This lack of information is in contrast to the criteria air pollutants for which there is extensive human exposure or epidemiological data on the health effects at ambient-exposure levels... characterizing the health effects of air toxics at ambient levels can be subject to a very high level of uncertainty; thus, using these health effects in economic benefits assessment is difficult." Do you agree that monetizing all air toxic benefits is still not possible and "using these health effects in economic benefits assessment is difficult" if not impossible? If not, why not? If so, why?
- 23. *OAR/OCSPP*: Do you agree with the American Academy of Pediatrics, which has stated there is no safe level of mercury exposure for children in the womb? If not, why not?
- 24. *OAR*: According to EPA's 2018 Supplemental Cost Finding proposal, EGUs emitted 29 tons of mercury annually prior to the implementation of the rule. What populations were most susceptible to mercury exposure and is mercury easily removed from the environment once it gets into the environment?
- 25. OAR: Are there states in which utilities may no longer seek rate recovery from public utility commissions for the capital costs and/or operating costs of air pollution control equipment for which there is not a legal requirement to operate that equipment? If so, please identify the states.
- 26. *OAR*: Are there states in which public utility commission rules or practices allow ratepayers or any third parties to mount challenges to power plant company rate recovery from public

¹² Statement of EPA Assistant Administrator Jeff Holmstead, Hearing Before the U.S. House of Representatives Energy and Air Quality Subcommittee of the House Energy and Commerce Committee entitled "The Clear Skies Initiative: A Multipollutant Approach to the Clean Air Act," (July 8, 2003), [HYPERLINK

[&]quot;https://archive.epa.gov/ocir/hearings/testimony/108_2003_2004/web/pdf/2003_0708_jh.pdf"].

¹³ Gwinn et al, "Meeting Report: Estimating the Benefits of Reducing Hazardous Air Pollutants—Summary of 2009 Workshop and Future Considerations," Environ Health Perspectives. 2011 Jan; 119(1): 125–130, [HYPERLINK "https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3018491/"].

- utility commissions for the capital costs and/or operating costs of air pollution control equipment for which there is not a legal requirement to operate that equipment? If so, please identify the states.
- 27. *OAR*: Can you identify all third parties who urged the agency, or OMB, not to propose to rescind the "appropriate and necessary" finding or the MATS rule? In particular, please identify the positions urged by the Edison Electric Institute; Utility Air Regulatory Group; the American Public Power Association; the National Rural Electric Cooperative Association; the Clean Energy Group; any electric utility company; any state or local air pollution control agency or their associations; any public health or environmental non-governmental organization. Which groups supported the proposed changes?

Questions on the Kigali Treaty

- 28. *OAR/OITA*: I have learned that counter to your implication in our private meeting, there have in fact been interagency meetings in which Bill Wehrum and other EPA officials participated to discuss the Kigali Amendment to the Montreal Protocol. Moreover, I have also been informed that EPA officials have stated at these meetings that EPA does not wish the treaty to be submitted for ratification.
 - a. Please list the dates of and attendees at each such meeting.
 - b. Do you share Mr. Wehrum's opinion that the Treaty should not be submitted to the United States Senate for ratification, or authorize him to convey this view at the meetings that have occurred?
- 29. *OAR/OITA:* U.S. businesses across the entire HFC supply chain are transitioning away from HFCs and taking advantage of new global markets. The US industries that use or produce fluorocarbons directly employ more than 593,000 Americans with an annual payroll in excess of \$34 billion, and sales of \$206 billion. The overall contribution of the fluorocarbon industries network to US economic activity is more than 2.5 million jobs and goods and services valued at more than \$630 billion annually. As I mentioned at the hearing American industry, both users and producers of HFCs, strongly support the ratification of the Kigali Amendment to the Montreal Protocol because it encourages domestic manufacturing of next generation alternatives and technologies and provides businesses a predictable transition away from HFCs. Various studies clearly show that ratification of Kigali will benefit American manufacturing jobs with little to no impact to consumers and an obvious benefit to the environment.
 - a. Do you support the ratification of the Kigali Amendment to the Montreal Protocol? If not, why not?
 - b. What will you commit to do to help facilitate the transition away from HFCs toward innovative next-generation technologies?
 - c. EPA conducted a cost-benefit analysis of the Montreal Protocol and the HFC phasedown that I believe shows that the ratification of Kigali will be a benefit to American businesses and American consumers. This study has not been released

- to the public yet. Will you immediately make the results of that study public? If not, why not and when will it be public?
- d. What challenges does EPA face in achieving these benefits and what will EPA, under your leadership, do to successfully overcome these challenges?
- 30. *OAR/OITA*: It is my understanding that EPA has prepared analysis of the consumer cost benefits of the Montreal Protocol, including projected benefits to US consumers from the implementation of the HFC phasedown consistent with the Kigali amendment to the Protocol.
 - a. Will you immediately make the results of that study public? If not, why not and when will the agency release this report?
 - b. Please share with the Committee this analysis and the key findings from EPA's work.

Questions on the Methylene Chloride Ban

- 31. *OCSPP*: When I raised my concerns at the hearing about EPA's failure to finalize a methylene chloride ban that sufficiently protects both consumer and commercial users against its severe risks (as your chief of staff committed to my staff would occur at the time former Administrator Pruitt first announced his plans to finalize the ban), you stated that "It is at OMB, it is ready to go as soon as the Federal Register opens. That is something that I have taken seriously, and it is something that we have spent a lot of time, I have spent a lot of personal time on that issue. And I hope we can get that out as quickly as possible."
 - a. Has EPA determined that methylene chloride poses an unreasonable risk to workers?
 - b. Do you agree that the majority of reported deaths due to methylene chloride exposure have occurred in a work setting, even when workers have undergone hours of training and followed all recommended precautionary measures?
 - c. Do you agree that the OSHA standard for methylene chloride exposure is more than 20 years old14, and that OSHA told EPA that it does not believe the OSHA standard is protective enough given the risks to workers that were identified by EPA?
 - d. Do you agree that as part of its analysis, EPA assessed whether a training program for the proper use of respirators for methylene chloride paint strippers could be effective, and concluded it would be too costly and would likely result in companies voluntarily using alternatives to methylene chloride?
 - e. How long does EPA expect it will take to finalize its proposal entitled "Methylene Chloride; Commercial Paint and Coating Removal Training, Certification and Limited Access Program" once it publishes this insufficiently protective approach to addressing occupational methylene chloride exposures?
 - f. How long does EPA expect it will take to finalize its consumer ban on methylene chloride?

¹⁴ [HYPERLINK "https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0231-0153"]

Questions on PFAS

- 32. *OW:* The Agency for Toxic Substances and Disease Registry (ATSDR) announced its draft toxicological profile for PFAS on June 21, 2018, covering a total of 14 perfluoroalkyl substances. Due to inadequate data for 10 of the compounds, ATSDR could establish Minimum Risk Levels (MRLs) for only 4 of the PFAS chemicals. These MRLs are not the same as the current EPA Lifetime Health Advisories (LHAs) for PFOA and PFOS, but the new profiles indicate potential health impacts at lower concentrations that EPA's LHAs, which are set at 70 parts per trillion (ppt). Several states have established drinking water standards substantially lower than EPA's 70 ppt LHAs for PFOS and PFOA—some in the range of the equivalent levels reflected by the ATSDR profile, or about 7 ppt for PFOS and 11 ppt for PFOA. Is EPA evaluating these state actions and the ATSDR findings and incorporating the latest science in its regulatory process?
- 33. *OW:* When EPA conducted its Unregulated Contaminant Monitoring Rule (UCMR) 3 monitoring, it identified 63 drinking water systems¹⁵ with combined PFOA and PFOS levels that exceeded EPA's health advisory levels. However, according to former EPA officials, EPA also received data related to PFAS detected at levels below EPA's health advisory level. For each category below, please provide a list of drinking water systems (including their location) whose UCMR 3 occurrence data fell into the specified range.
 - a. Systems whose levels exceeded the combined PFOA and PFOS health advisory levels.
 - b. Systems whose combined PFOA and PFOS levels were between 60-70 ppt.
 - c. Systems whose combined PFOA and PFOS levels were between 50-60 ppt.
 - d. Systems whose combined PFOA and PFOS levels were between 40-50 ppt.
 - e. Systems whose combined PFOA and PFOS levels were between 30-40 ppt.
 - f. Systems whose combined PFOA and PFOS levels were between 20-30 ppt.

Questions on Past Commitments

- 34. *AO/OITA:* In Chad McIntosh's September 2, 2018 letter to me, he made several commitments. For each of the following commitments drawn from that letter, please indicate whether the commitment has been met. If it has not been met, why not, and by what date will it be met?
 - a. "If confirmed, I will commit to working directly with the National Tribal Caucus (NTC), a national body of tribal advisors who focus primarily on identifying and addressing national, cross-media and emerging tribal environmental issues. I will commit to meeting with the NTC on at least an annual basis. In practice, discussions will likely occur on a monthly basis. I will commit to meeting with the entire National Tribal Operations Committee on an annual basis."

¹⁵ [HYPERLINK "https://pfas-1.itrcweb.org/wp-content/uploads/2018/01/pfas fact sheet regulations 1 4 18.pdf"]

- b. "In addition, I commit to meeting with each of the Regional Tribal Operations Committee (RTOC) at least on an annual basis with my EPA regional counterparts, and commit to participating in key tribal meetings such as the National Congress of American Indians Annual Convention"
- c. "Should I be confirmed, I will enhance the strength of Tribal representation within EPA by hiring a member of a federally recognized tribe to be the Director of the American Indian Environmental Office within the Office of International and Tribal Affairs."
- 35. *OCSPP*: In your January, 2019 letter to me, you made several commitments. For each of the following commitments drawn from that letter, please indicate whether the commitment has been met. If it has not been met, why not, and by what date will it be met?
 - a. "EPA will withdraw its OMB submission to propose revisions to these [worker protection] rules and will not make any changes to the designated representative and minimum age provisions."
 - b. The Agency will promptly submit the methodology for deciding how to collect and evaluate scientific research related to a chemical's safety that was recently developed by the Office of Chemical Safety and Pollution Prevention (OCSPP) to the National Academy of Sciences (NAS) for peer review and feedback.

Questions on the Shutdown

- 36. *OMS/OW:* Please describe how the on-going government shutdown is affecting EPA's efforts to
 - a. Provide guidance to state drinking water programs; and
 - b. Coordinate with states to keep toxic chemicals out of drinking water and respond to contamination events.
- 37. *OW*: Please provide an update on when you expect the following EPA regulatory actions to be completed assuming the government shut-down ends by a) February 15 2019 or b) April 1, 2019.
 - National Primary Drinking Water Regulations for Lead and Copper (revisions to the so-called Lead and Copper Rule) proposed rule expected in February 2019 according to the Fall 2018 Unified Agenda.
 - National Primary Drinking Water Regulations: Regulation of Perchlorate (pursuant to a consent decree entered by the U.S. District Court for the Southern District of New York, EPA was supposed to propose a Maximum Contaminant Level Goal (MCLG) for perchlorate in drinking water no later than October 31, 2018 and finalize the MCLG no later than December 19, 2019).
 - Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water (EPA proposed regulations to implement section 1417 of the Safe Drinking Water Act on January 17, 2017 with a stated goal in the Unified Agenda of finalizing that rule by June 2019).

38. *OMS/OGC:* EPW staff contacted your office via email on January 9, 2019 requesting the names of the 6 EPA staff deemed "necessary to perform activities expressly authorized by law" and the 12 EPA staff deemed "necessary to the discharge of the President's constitutional duties and powers" in EPA's December 31, 2018 shutdown contingency plan.

On January 10, 2019 a member of your staff replied via email, writing "It has been difficult with limited resources to pinpoint. Still working on this." To date, no additional response failed to that email request has been received.

Also on January 10, 2019, members of the EPW committee sent you a letter requesting information about any EPA staff that had been or was currently engaged in work related to your nomination. To date, no response to that letter has been received.

On the evening of January 14, 2019, reports surfaced that you had updated EPA's contingency plan to increase the number of EPA staff deemed "necessary to the discharge of the President's constitutional duties and powers" from 12 to 28, and increased the number of EPA staff deemed "necessary to perform activities necessarily implied by law" from zero (0) to 12.

During your confirmation hearing you also admitted in an exchange with Senator Van Hollen that certain EPA staff were brought back to work from furlough during the government shutdown to prepare you for this hearing;

<u>Senator Van Hollen</u>. And that there are approximately 891 who are on the job, is that approximately right?

Mr. Wheeler. That sounds pretty exact, 891. It varies from day to day. We bring back people to work on specific issues.

<u>Senator Van Hollen</u>. Right. Including some that you brought on to prepare for this hearing, is that right?

Mr. Wheeler. Yes, Senator.

- a. Please list the names and official titles of the 6 EPA staff deemed "necessary to perform activities expressly authorized by law" in EPA's December 31, 2018 shutdown contingency plan.
- b. Please list the names and official titles of the 12 EPA staff deemed "necessary to the discharge of the President's constitutional duties and powers" in EPA's December 31, 2018 shutdown contingency plan.
- c. Please list the names and official titles of 28 EPA staff deemed "necessary to the discharge of the President's constitutional duties and powers" in EPA's January 14, 2019 contingency shutdown plan.
- d. Please list the names and official titles of the 12 EPA staff deemed "necessary to perform activities necessarily implied by law" in EPA's January 14, 2019 contingency shutdown plan.

- e. For each EPA staff member described in questions (a) through (d), please provide their work schedules and an accounting of each hour worked by each of those staff, as applicable, on any work activity related to your nomination or the confirmation process, and a description of the task or work function performed during that time.
- f. Please submit all letters, emails, memoranda, or other written or electronic correspondence prepared, transmitted, or received by each EPA staff member described in questions (a) through (d) that relates to your nomination or confirmation process.
- g. At any time since December 29, 2018, has any EPA staff member not encapsulated by questions (a) through (d) engaged in work activities related to your nomination or the confirmation process?
- h. If your answer question (g) is yes, please list the names and official titles of those individuals.
- i. If your answer to question (g) is yes, please submit all letters, emails, memoranda, or other written or electronic correspondence prepared, transmitted, or received by those EPA staff member(s) that relates to your nomination or the confirmation process.
- j. If your answer to question (g) is yes, please submit work schedules and an accounting for hours worked by each of those EPA staff, as applicable, on any work activity related to your nomination or the confirmation process, including a description of the task or work function performed during that time.
- k. Please list the names and official titles of the 12 EPA staff deemed "necessary to perform activities implied by law" that were added to EPA's contingency plan for the first time on January 14, 2019? What change in law or circumstance occurred between December 31, 2018 and January 14, 2019 lead you to add those 12 EPA staff after you originally estimated that no EPA staff would be necessary to perform activities implied by law?
- 1. What work activities are the 12 EPA staff deemed "necessary to perform activities implied by law" by the January 14, 2019 EPA shutdown contingency plan engaged in? Are any of those 12 EPA staff engaged in work activities or functions related to your nomination or the confirmation process?
- m. Were any of the additional EPA staff added to the December 29, 2018 EPA shutdown contingency plan by the January 14, 2019 EPA shutdown contingency plan engaged in work activities or functions related to your nomination or confirmation process prior to January 14, 2019?
- n. If your answer to question (m) is yes, please list the names and official titles of any such EPA staff member or members.
- 39. *OMS/OGC:* Have any EPA contractors, sub-contractors, or independent contractors performed work activities or functions related to your nomination or the confirmation process since December 29, 2018? If so, please list the names and official titles of those individuals.
- 40. *OMS/OGC:* How many total hours have been spent by you and EPA staff discussing, researching or otherwise preparing for your nomination and the confirmation process, including your confirmation hearing testimony and responding to questions for the record?

- 41. *OMS*: In 2017 EPA conducted roughly 12,000 inspections to make sure that air, water and toxic waste rules were being complied with. That's more than 230 each week. How many inspections has EPA conducted in the approximately three weeks since December 29, 2018?
 - a. Has the ability of EPA's pollution inspectors to monitor air emissions been impacted or diminished in any way by the federal government shutdown, yes or no?
 - b. Has EPA's ability to monitor and test for water contamination been impacted or diminished in any way by the federal government shutdown, yes or no? If yes, please describe the impact of halted inspections during the shutdown on human health and the environment.
- 42. *OMS/OCSPP/OECA:* I recently learned that samples of GenX, an unregulated, PFOA-like contaminant used to make nonstick cookware and other products, are sitting in refrigerators near the Lower Cape Fear River in Fayetteville, North Carolina because EPA's lab in Athens, GA has been shut down.
 - a. Please confirm whether this is true.
 - b. If so, please provide a list of similar situations where EPA's ability to monitor and test for water contamination has been affected by the government shutdown.
- 43. *OMS/OAR:* I recently learned that EPA has had to stop sampling air emissions in Louisiana for chloroprene.
 - a. Please confirm whether this is true.
 - b. If so, please provide a list of similar situations where the ability of pollution inspectors to monitor air emissions been impacted or diminished due to the government shutdown.
- 44. *OMS/OECA/OLEM*: I have heard that EPA was forced to cancel a public hearing on cleanup proposals for the former West Calumet Housing Complex in East Chicago, Indiana.
 - a. Please confirm whether this is true.
 - b. EPA's Office of Land and Emergency Management, which oversees cleanup of Toxic Superfund sites, is currently down from 468 staffers to 3. Has Superfund site monitoring or oversight been impacted or diminished in any way during the government shutdown as compared to the same time period last year? If so, please quantify all such impacts.
- 45. *OMS/OGC:* Have you or any member of EPA staff directed EPA's Office of General Counsel (OGC) to engage in any work since December 29, 2018? Please provide this Committee with a comprehensive list of the types and scope of work performed by OGC staff since December 29, 2018, noting specifically any task that relates to (i) your nomination or confirmation hearing; (ii) pending or ongoing regulatory matters; and (iii) enforcement actions or consent decrees.

- 46. *OMS/OGC:* On December 28, 2019, EPA tweeted: "Due to a lapse in appropriations, EPA websites and social media will not be regularly updated. . . . In the event of an environmental emergency threatening the safety of human life or to protect certain property, epa.gov will be updated with appropriate information." Aside from a post on January 10, 2019 announcing an enforcement settlement with Fiat Chrysler, EPA's social media accounts have been silent since EPA closed on December 29, 2018. However, on the day of your confirmation hearing, January 16, 2019, EPA's Twitter feed began posting messages promoting your nomination, including encouraging the public to watch your hearing, quoting statistics from your testimony, and posting an op-ed from Chairman Barrasso praising your nomination. On that same day, EPA also issued press releases to reporters with Chairman Barrasso's op-ed and your written testimony.
 - a. Have you or any member of EPA staff directed EPA's Office of Public Affairs (OPA) to engage in any work since December 29, 2018?
 - b. Do you consider your nomination or confirmation to constitute an "environmental emergency threatening the safety of human life" or property? If so, do you believe your nomination and confirmation warranted requiring furloughed OPA staff to draft and post on social media accounts?
 - c. Please provide this Committee with a comprehensive list of the types and scope of work performed by OPA staff since December 29, 2018, noting specifically any task that relates to (i) your nomination or confirmation hearing; (ii) pending or ongoing regulatory matters; and (iii) enforcement actions or consent decrees.
- 47. *OMS/OGC/AO*: Tens of thousands of EPA staff and contractors were furloughed after the federal government was shut down and others have been asked to work for little or no pay.
 - a. How many EPA staff or contractors have missed or made late rent or mortgage payments, or are facing eviction or foreclosure?
 - b. How many EPA staff or contractors have missed or made late student loan payments during the shutdown?
 - c. How many EPA staff or contractors have missed payments on auto loans or leases during the shutdown?
 - d. How many EPA staff or contractors have missed credit card payments, or incurred credit card interest as a result of their inability to make those payments?
 - e. How many EPA staff or contractors have been unable to pay for child care during the shutdown?
 - f. How many EPA staff or contractors have been unable to pay medical expenses for themselves or their families during the shutdown?
 - g. How many EPA staff or contractors have filed for unemployment benefits?
 - h. How many EPA staff or contractors have attempted to get part-time or temporary jobs during the shutdown?
 - i. How many EPA staff or contractors have had their credit scores impacted by the shutdown?
 - j. How many EPA staff or contractors have applied for private loans to make ends meet during the shutdown? How many were rejected?

- k. How many EPA staff or contractors have been forced to spend money from their savings accounts, retirement accounts, 401ks, pension funds, or children's 529 college funds as a result of the shutdown?
- 1. How many EPA staff or contractors have been forced to secure, or attempt to secure private loans or additional lines of credit as a result of the shutdown?
- m. How many EPA staff or contractors have been forced to pawn or sell personal effects or real property as a result of the shutdown?
- 48. *OMS/Regions:* It is my understanding that the EPA-managed projects listed below have stopped due to the shutdown.
 - a. Please confirm whether that is true for each project.
 - b. In addition, please supplement this list with additional similar projects around the country that are halted because of the shutdown.
 - i. Camp Fire, Paradise, CA (household waste cleanup)
 - ii. Whiting Metals, Whiting, Indiana (cited for harmful levels of airborne lead)
 - iii. SH Bell, East Liverpool, Ohio (fence line monitoring, cited for airborne manganese)
 - iv. SH Bell, Chicago, Illinois (fence line monitoring, cited for airborne manganese)
 - v. Watco, Chicago, Illinois (fence line monitoring, cited for airborne manganese)
 - vi. Sterigenics, Willowbrook, Illinois (ethylene oxide)
 - vii. CII Rain Carbon, Robinson, Illinois (cited for airborne particulate matter)
 - viii. NASCO, Chicago, Illinois (awaiting results of metal and particulate matter monitoring
 - ix. General Iron, Chicago, Illinois (cited for Volatile Organic Compounds)
 - x. USS Lead, East Chicago, Illinois (superfund emergency removal for lead, relocation of residents, soil removal)
 - xi. St. Regis Paper Co., Cass Lake, Minnesota (clean-up of dioxin, pentachlorophenol, PAHs)
 - xii. Lukenheimer Foundry, Cincinnati Ohio (clean-up of heavy metals, corrosives, ignitable wastes)
 - xiii. Graveyard Auto, Clarksville, Indiana (clean-up of leaking drums)
 - xiv. C&H Mineral, Hubbel, MI (clean-up delayed of arsenic, lead)
- 49. *OMS/OW:* EPA's Safe Drinking Water Information System (SDWIS) identifies which public water systems are in violation of drinking water standards and provides information on the severity of each violation. Unfortunately, a recent assessment of SDWIS drinking water reports indicates a major drop in enforcement actions. It appears that as a result of the government shutdown, EPA did not make its quarterly Dec 31, 2018 update to SDWIS. This means that communities will not have the most up-to-date information on the quality of their drinking water.

- a. Please confirm whether it is true that EPA is unable to update SDWIS because of the government shutdown.
- b. If you answered the first question in the affirmative, please explain the rationale behind your determination to allocate resources away from updating drinking water contamination data and to your confirmation hearing preparations.

Questions on Congressional Correspondence

- 50. *OGC/OEX:* For approximately the past year and a half, EPA has consistently provided documents I have requested in oversight letters at the same time or earlier than the same materials were being provided to Freedom of Information Act (FOIA) requestors or House Committee Chairs. Will you commit to continuing this practice of providing me with responsive materials at the same time they are provided to House Committee Chairs and FOIA requestors, or sooner? If not, please explain why not.
- 51. *OCIR/OPA*: Since you took the helm at EPA as Acting Administrator on July 6, 2018, I and members of this Committee have sent you many letters containing document requests that remain unanswered. A number of letters that were sent to your predecessor also lack complete responses. By what specific date should we expect to receive EPA's complete response to each of the following letters?
 - a. April 4, 2017 letter on political appointees' obstruction of career staff's estimates related to the implementation of the HONEST Act
 - b. April 6, 2017 and April 14, 2017 letters on EPA's withdrawal of an Information Collection Request sent to the oil and gas industry
 - c. April 7, 2017 letter on EPA's plans to rescind the Clean Power Plan
 - d. August 31, 2017 letter on secrecy at EPA
 - e. October 25, 2017 letter detailing concerns about the lead and copper rule
 - f. October 26, 2017 letter on EPA's decision to repeal the Clean Power Plan
 - g. December 13, 2017 letter on EPA's Sue and Settle Directive
 - h. January 9, 2018 letter on Mr. Pruitt's appointment of two scientists to serve on EPA's Federal Advisory Committees who have financial conflicts of interest
 - i. January 18, 2018 letter on a range of topics, including TSCA, climate change, and fuel efficiency standards
 - j. January 19, 2018 letter on Mr. Pruitt's meetings with industry
 - k. January 19, 2018 letter on transparency, enforcement, and various other concerns
 - 1. March 6, 2018 letter on Mr. Pruitt's wasteful spending
 - m. March 12, 2018 letter on EPA's decision to repeal emissions standards for glider trucks
 - n. March 14, 2018 letter on EPA's reversal of the once-in-always-in policy

- o. April 3, 2018 letter on Mr. Pruitt's decision to reverse EPA's prior determination on greenhouse gas tailpipe standards
- p. April 3, 2018 letter on Mr. Pruitt's December 2017 trip to Morocco
- q. April 9, 2018 letter on Mr. Pruitt's use of Safe Drinking Water Act authority to award large pay raises to favored aides
- r. April 12, 2018 letter on Mr. Pruitt's multiple ethics and wasteful spending practices
- s. April 24, 2018 letter on EPA's drafting of the secret science rule and its major flaws
- t. May 3, 2018 letter on EPA's signing of a Cooperative Research and Development Agreement with Water-Gen
- u. May 15, 2018 letter on reports that the White House prevented the release of a study concluding that PFAS poses a danger to human health at lower levels than set by EPA
- v. May 17, 2018 letter on EPA's significant delay of the IRIS assessment on formaldehyde
- w. May 21, 2018 letter on Mr. Pruitt's compliance with rules governing his legal defense fund
- x. June 27, 2018 letter on EPA's reduced enforcement of the Clean Water Act
- y. November 15, 2018 letter on EPA's federal advisory committees
- z. December 3, 2018 letter on the Trump Administration's preparation and release of the Fourth National Climate Assessment
- aa. December 6, 2018 letter regarding EPA's compliance with GSA's travel regulations
- bb. December 19, 2018 letter requesting communications between industry and EPA about fuel economy or greenhouse gas tailpipe standards
- cc. January 10, 2019 letter requesting documents related to the government shutdown and use of furloughed staff to prepare you for your confirmation hearing
- dd. January 10, 2019 letter on Diane Hendricks' \$50,000 contribution to Scott Pruitt's legal defense fund

Questions on other Clean Air Act issues

- 52. *OAR:* The Ozone Transport Commission has documented electric generating units (EGUs) that appear to have turned off their nitrogen oxide (Nox) controls. What are the public health and environmental impacts of these actions? Are downwind states including Maryland, Delaware and Connecticut adversely impacted by transported NOx and/or ozone?
- 53. *OAR*: In your August 1, 2018 hearing before the EPW Committee, you said you could not "predict with certainty" the effects EPA's rollbacks would have on transport pollution and attainment status for states. In part, that is because at the time EPA had not modeled any of the effects these rules may or may not have on states. Since that time, has EPA modeled the effects of the proposed clean air regulations and changes in guidance on air pollution and transport pollution?

- a. If the Affordable Clean Energy Act goes final, how will that affect downwind pollution and the states' ability to meet attainment status for all National Ambient Air Quality Standards (NAAQS), and State Implementation Plans (SIPs), since EPA estimates there will be an increase in sulfur dioxide and ozone pollution from this rule?
- b. If EPA rescinds MATS, how will that affect downwind pollution, the states' ability to meet attainment status for all NAAQS and SIPs?
- c. What are the effects of the "once in, always in" change in guidance on downwind pollution, the states' ability to meet attainment status for all NAAQS and SIPs?
- d. What are the effects of the New Source Review changes in guidance on downwind pollution, the states' ability to meet attainment status for all NAAQS and SIPs?
- e. How will the changes in regulating methane emissions from oil and gas affect downwind pollution, the states' ability to meet attainment status for all NAAQS and SIPs?
- 54. *OAR:* Can you name three policies you have formally proposed (not just announced that you will propose) or implemented that the scientific community believes will actually lead Americans to breathe LESS toxic air pollution than they would have had all the protective rules implemented by President Obama stayed in place?
- 55. *OAR*: During the August 1, 2018 EPW hearing, I asked you several questions for the record regarding the Renewable Fuel Standard (RFS) and my continued concerns about the volatility in the RFS compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market. Despite promises to act on this issue, I've seen no action to date from EPA on the issue of RIN market manipulation and still do not have a clear answer on how EPA is coordinating with other agencies to address this issue. I was extremely disappointed by your August 1st hearing answers and ask that you please provide greater clarity.
 - a. Please provide the dates, times and details of any communication, including any emails and phone calls, between the Commodity Futures Trading Commission (CFTC) and EPA since the CFTC-EPA memorandum of understanding on RIN market manipulation was signed.
 - b. CFTC has stated publicly that it provided EPA with recommendations on what data EPA should be collecting to mitigate RIN market manipulation. Please provide CFTC's recommendations and explain why EPA has refused to make this information public.
 - c. In your answers to my August 1st hearing questions you indicated your staff had only met with Federal Trade Commission (FTC) staff one time. Was that an accurate assessment? Has the number changed since August 1, 2018? And if true, why isn't EPA having ongoing conversations with FTC on this issue?
 - d. Your answers to my August 1st hearing questions suggest that your staff only shared RIN data with CFTC from 2010 to August 2016. Why hasn't EPA shared any RIN data with CFTC since August 2016?

- e. The State of California has created a dashboard to provide weekly, monthly, quarterly and annually trading data for its own renewable fuel program. After talking to many stakeholders involved in that process, it seems that California's renewable fuel trading dashboard has been able to provide valuable insight into trading and helped reduced market volatility. EPA can easily create a similar dashboard today and not wait for rulemaking. You have already created a dashboard for small refinery waivers, why hasn't EPA created a RIN dashboard that provides the public weekly, quarterly and annual RIN trading data?
- f. The CFTC has successfully used position limits to protect against excessive speculation and market manipulation, which helped stabilize markets. In addition, Canada and California have also used position limits as effective market controls to help reduce market credit hoarding. Canada, specifically, has done so regarding their own RFS program with success. Are position limits being considered in any efforts to improve RIN market transparency and has EPA had any discussions with the CFTC about establishing position limits for the RFS RIN market? If not, why not?
- g. Has EPA had any discussions with Canada about their biofuel market credit controls? If so, can you elaborate on those discussions? If not, why not?
- 56. *OECA/OGC*: With a significant non-compliance rate, why isn't EPA's Office of Enforcement and Compliance Assurance enforcing the manufacturer emission reporting requirements under the residential wood heater New Source Performance Standards rules?
- 57. *OAR*: In your testimony, you highlighted EPA's announcement that it will officially begin the process to set a new national nitrogen oxide (NOx) emissions standard for heavy-duty vehicles
 - a. States have been asking EPA to take this action for over two years. Why is EPA waiting until early 2020 to propose regulations?
 - b. Will you finalize a rule in time to help states that have ozone nonattainment concerns meet their SIP requirements for the ozone NAAQS?
 - c. What ozone reduction metric will you use to determine whether the proposal is adequately protective of public health?
 - d. Emissions control technologies are able to reduce NOx emissions by 90%, down to .02 g/bhp-hr, at approximately \$500-1000 per diesel truck by 2024 or earlier. Alternative fuel vehicles such as those with natural gas engines already achieve those reductions. How does this estimated cost compare to the current or projected range of cost-effectiveness of stationary control technologies that might otherwise have to be implemented to achieve the same NOx reductions in ozone nonattainment areas?

Questions on EPA's Use of Science

58. *OAR*: The EPA recently disbanded its 20-member Particulate Matter Review Panel (PMRP) and decided not to convene the Ozone Review Panel. In addition, EPA announced that the responsibility of those two panels to advise on EPA's 5-year review of the National Ambient

Air Quality Standards (NAAQS) will be transferred to the significantly smaller sevenmember Clean Air Science Advisory Committee (CASAC), and such review will occur on an accelerated schedule. Notably, CASAC's draft comments to you dated December 10, 2018 recommend that you reconvene the PMRP and warns that the accelerated schedule is too short.

- a. Given that your decision to eliminate the first two larger expert panels, transfer the workload to the much smaller CASAC, and speed up the review will have a direct impact on the quality of review conducted, did you consult with CASAC on the accelerated schedule in the memo or the consequences of doing away with panels before you took those actions? If not, please explain why not.
- b. Several members of CASAC have expressed doubt that they have the needed expertise to review the science on particulate matter. Do you still believe that members of this CASAC are qualified to do the work you have asked of them? If so, please explain why.
- c. One of the areas of expertise that is lacking on CASAC is epidemiology, which would information CASAC's understanding of the impacts of particulate matter on early death and heart attacks. Do you believe that CASAC can conduct an informed review of the NAAQS given the absence of this crucial subject matter expertise? If so, please explain why.
- 59. *ORD:* Please provide a copy of the IRIS Handbook that has been completed but is not yet published.

Questions on other Clean Water Issues

- 60. *OW*: It has been a very long time since Washington, DC struggled with its lead in drinking water discovery, and it has been four years since the drinking water crisis erupted in Flint, MI.
 - a. How many lead service lines in Flint have been replaced as of December 31st, 2018?
 - b. Administrator Pruitt made lead—especially in drinking water—an agency priority, declaring a "War on Lead" in February 2018. Approximately 5000 municipalities across the country exceeded the 15 parts per billion standard in place at the time of his declaration. How many of those municipalities now comply with that legal limit?
 - c. What has EPA done to facilitate that compliance?
 - d. Having admitted a failure of oversight in the Flint situation, could you describe how EPA has since strengthened its oversight of state drinking water programs?
- 61. *OW*: Please explain EPA's intentions regarding the discharge of partially treated or "blended" sewage from wastewater treatment plants.
 - a. Does EPA intend to propose regulations permitting discharge of partially treated or blended sewage from wastewater treatment plants? If so, when?

- b. If so, under what circumstances (i.e., what thresholds of rainfall, etc.)?
- c. Does EPA have evidence that such discharges are safe for public health and the environment? If so, please provide it.
- d. In EPA's assessment, how effective are so-called "side-stream" technologies, proposed by treatment plant operators, as an alternative to their historic treatment methods?
- 62. *OW*: As you know, the proposed WOTUS Rule you and the Army Corps of Engineers propose is notably lacking in specifics related to some of the necessary details the public needs to fully consider the implications of your proposal, much less address the numerous and potentially rule-obliterating questions posed in the preamble.
 - a. With that concern in mind, please provide estimates of the miles and acres affected for the following categories of waters covered by the proposed rule (please provide this information on a state-by-state basis):
 - i. The number of miles of ephemeral streams;
 - ii. The number of miles of intermittent streams;
 - iii. The acres of wetlands without a surface water connection to any "waters of the United States" as the December 2018 proposal would define that term;
 - iv. The acres of wetlands without a surface water connection to any "waters of the United States" as the December 2018 proposal would define that term plus those wetlands with a surface water connection only to intermittent streams; and
 - v. The acres of ponds that will not qualify as "waters of the United States" as the December 2018 proposal would define that term.
 - b. To further assist our consideration of the proposed rule, please provide the following information (also on a state-by-state basis) for each of the categories of waters identified in response to question 16(a) above:
 - i. The population served by drinking water systems with source water protection areas containing any of the waters identified above.
 - ii. Any dischargers permitted under the National Pollutant Discharge Elimination System to discharge to any of the waters identified above.
 - iii. Any facilities subject to the oil spill prevention, control, and countermeasure program because of their potential to affect any of the waters identified above.
 - iv. Any of the waters identified included on a state list submitted to EPA pursuant to section 303(d)(1) of the Clean Water Act.
 - v. Any enforcement action under the authority of section 309 of the Clean Water Act, in which the water body about which the violation was alleged was any of the waters identified above. This includes any compliance order, civil or criminal action, or assessed administrative penalty.
 - vi. Any jurisdictional determination (either preliminary or approved) by the U.S. Army Corps of Engineers which assessed whether a water body was

- a "water of the United States" and for which the subject water was any of the waters identified above.
- vii. Any activity for which an applicant has sought a federal license or permit and which may result in a discharge into any of the waters identified above, for which the state has granted, denied, waived, or provided conditional certification pursuant to section 401 of the Clean Water Act.

Senator Booker:

- 63. *OCSPP:* Following the passage of the newly strengthened Toxic Substances Control Act (TSCA), EPA proposed two rules banning certain uses of trichloroethylene (TCE). EPA has since delayed finalizing these bans for more than 2 years and has stated its intent to ignore exposure to TCE from releases into air, water, and land in a review of the chemical.
 - a. Are you aware that TCE is a known carcinogen linked to neurological damage and birth defects that is polluting the air, land, and water in my state and in states across the country?
 - b. Will you commit to finalizing the proposed bans on TCE within 90 days in order to protect the health of children and workers while you continue the broader risk evaluation of TCE under TSCA?
 - c. Will you commit to ensuring that EPA incorporates all known releases of and exposure to TCE, including through air, soil, and water, in its ongoing risk evaluation of TCE?
- 64. *OCSPP*: One positive action taken under Administrator Pruitt was EPA's commitment to finalizing a ban proposed for all consumer and most commercial uses of methylene chloride in paint strippers. The record EPA assembled two years ago to support the need for a ban on most commercial as well as consumer uses is clear: Allowing such products to stay on the market based on reliance on increased labeling, protective equipment, or training requirements will not protect the public's or workers' health. It now appears that you are rolling back that commitment and planning to limit the ban of this highly toxic and acutely lethal chemical to consumer uses only.
 - a. Are you aware that workers constitute the vast majority of the more than 50 deaths from these uses, and that any failure to or delay in protecting workers will lead to more deaths?
 - b. Will you commit to finalizing a ban for all consumer and most commercial uses of methylene chloride, as originally proposed by the EPA?
- 65. *OW*: As you know, your predecessor declared a "War on Lead" in February 2018 due to the harmful effects this toxic metal can have on human health. As you also know, the legal limit on lead in drinking water is 15 ppb. When the "War on Lead" was announced, approximately 5000 municipalities across the country exceeded that number.

- a. To date, how many of those municipalities have come within the legal limit?
- 66. *OP*: Environmental Justice is something that I am very concerned about. As you know, low income communities, communities of color and indigenous communities are disproportionately located near and harmed by sources of pollution. So I appreciated that in your opening statement that under your leadership EPA was focused on helping the communities that are on the front lines of pollution. But unfortunately it seems to me that the actions you have already taken at EPA will cause great harm in these communities.
 - a. Can you please explain how your proposal to repeal and replace the Clean Power Plan will increase protections for human health and the environment in low income communities, communities of color and indigenous communities?
 - b. Can you please explain how your proposal to weaken oil and gas methane standards will increase protections for human health and the environment in low income communities, communities of color and indigenous communities?
 - c. Can you please explain how your proposal to delay deadlines for landfill emission guidelines will increase protections for human health and the environment in low income communities, communities of color and indigenous communities?
 - d. Can you please explain how your proposal to delay deadlines for wood smoke standards will increase protections for human health and the environment in low income communities, communities of color and indigenous communities?
- 67. *OLEM/OP:* According to the most recent Regulatory Agenda, EPA is still considering a proposal to rollback key updates from the 2017 Chemical Disaster Rule. Last July, I asked that you withdraw the proposed modifications to the existing safeguards that protect communities, especially low-income communities, indigenous communities, and communities of color, from toxic chemicals stored in industrial facilities across the country. What is particularly troubling is that it appears that you are continuing to move forward with the rollbacks even though EPA's own findings show that there is evidence that risks from Risk Management Programs (RMP) facilities disproportionately fall on minority and low-income neighborhoods.
 - a. What is the status of this work?
 - b. Given your testimony that you intend to focus on protecting communities suffering most from pollution, will you commit to not move forward with this proposal that will place undue burden on those who are most at risk?
- 68. *OCSPP/OP*: Will you provide a date certain by when you will withdraw from OMB review EPA's proposal to revisit the minimum age requirement under the Worker Protection Standard (WPS) and Certification of Pesticide Applicators (CPA) rules, and the designated representative provision of the WPS, in accordance with your commitment to Senator Carper as set forth in your January 2019 letter?
- 69. *OCSPP/OP*: Will you provide a date certain by when you will remove the above-referenced actions from EPA's regulatory agenda?

- 70. *OCSPP/OP:* Will you commit to withdraw EPA's proposal to revisit the application exclusion zone (AEZ) established in the revised Worker Protection Standard?
 - a. If not, if and when EPA does revisit the AEZ, will you commit to uphold the law and ensure that any revision to the AEZ will protect workers and other persons from pesticide exposure – including exposure from pesticide drift – as required by FIFRA?
- 71. *OCSPP*: Will EPA commit to seeking input from the FIFRA Scientific Advisory Panel regarding risks to workers and others associated with pesticide drift, as well as how to ensure that there is no unreasonable adverse effects to workers and bystanders from pesticide drift resulting from pesticide application?
- 72. *OCSPP*: Will EPA confirm that it will not propose any rule revising the WPS or CPA without first consulting with the FIFRA Scientific Advisory Panel?
- 73. *OCSPP*: Will EPA commit to considering the dangers and realities associated with requiring additional personal protective equipment (including the risk of heat stress) when conducting pesticide registration reviews?

Senator Boozman:

- 74. *OCSPP*: Acting Administrator Wheeler: There is research taking place in my state and across the United States that would benefit from innovations in plant breeding, such as gene editing. The United States Department of Agriculture (USDA) and Food and Drug Administration (FDA) have been working to quickly develop proposals that will allow these innovations to occur, and grant clarity to my constituents as well as other stakeholders on how gene edited products will be treated. EPA has regulatory oversight over gene edited plants that would produce pesticide-like substances, and yet has not offered any thoughts on the issue thus far. Would you commit EPA to working with FDA and USDA to develop a consistent, interagency approach, in order to grant clarity to affected stakeholders?
- 75. *OW:* Acting Administrator Wheeler: As you know, the Vessel Incidental Discharge Act (VIDA) was signed into late last year. This was an important measure that will have a long-lasting impact on commercial vessel operators in my state. It's important to start the implementation process for VIDA as soon as possible. Notwithstanding the shutdown's effect on Agency personnel, can you give the Committee some insight on whether the Agency has begun to address VIDA implementation?
- 76. *OAR*: Acting Administrator Wheeler: There is scientific evidence showing ethanol blends above 10 percent can harm older vehicles, small engines (such as lawn mowers), boat engines and motorcycles and is incompatible with the existing retail gasoline infrastructure. What will you do to ensure that the annual RFS-mandated volumes protect the current U.S. vehicle fleet and existing infrastructure?

Senator Braun:

- 77. *OW:* During your testimony, you stated that you consider yourself an avid conservationist. I was glad to hear you say that you are working to reduce the timetables of superfund cleanup, particularly in situations where the health of young children may be at risk. I remain interested in working closely with you on your conservation efforts.
 - One area in particular where I would like to cooperate regards the agencies work facilitating private conservation projects. Can you provide a few examples of where EPA has been able to step in and aid private citizens in conservation efforts?
- 78. *OAR:* In November 2016, the EPA published a proposed rule known as the Renewables Enhancement and Growth Support (REGS) Rule. The draft rule proposed a wide range of technical fixes and commented on a number of regulatory issues that biofuel stakeholders have long hoped to address. While the EPA completed the notice and comment process on the REGS rule almost two years ago, the Agency never implemented a final rule.
 - a. Can you provide update on the status of the proposed REGS rule and, in particular whether the EPA currently has a timetable for completing this rulemaking?
 - b. Is EPA contemplating including various proposals from the REGS rule as a part of other related priority rulemakings such as the RFS reset?

Senator Cardin:

- 79. *OW:* In your view, what is the EPA's role in holding the Chesapeake Bay jurisdictions accountable for reducing pollution and meeting target dates, and the role of the Chesapeake Bay Total Maximum Daily Load (TMDL) in that accountability process?
- 80. *OAR:* As EPA Administrator, will you commit to submitting the Kigali Amendment to the Montreal Protocol to the U.S. Senate for ratification? Please explain why or why not.
- 81. *OAR:* Under the EPA's Safer Affordable Fuel Efficient (SAFE) Vehicles Rule for Model Years 2021-2026, the EPA's preferred option of "freezing" existing Corporate Average Fuel Economy (CAFE) and tailpipe carbon dioxide standards for passenger cars and light trucks at model year (MY) 2020 levels for both programs through 2026 will increase U.S. fuel consumption and will result in significant increases in emissions of nitrogen oxide (NOx). The Chesapeake Bay TMDL incorporates air deposition load allocations that account for the emission reductions anticipated by the Chesapeake Bay watershed jurisdictions and other states in the larger Chesapeake Bay airshed. Can the EPA account for the impact of the increase in emissions on the expected decreases in nitrogen deposition in the Chesapeake Bay that are reflected in the Chesapeake Bay TMDL?
- 82. *OAR:* Emissions will also increase under the EPA's proposed Affordable Clean Energy (ACE) Rule that proposes to alter how facilities calculate emissions increases that trigger New Source Review. Please provide an estimate for the Chesapeake Bay airshed of the

- difference in NOx reductions that were expected to be achieved by implementing the existing New Source Review Program under the ACE Rule versus the Clean Power Plan.
- 83. *OW:* According to the Environmental Integrity Project's report, "Undermining Protections for Wetlands and Streams: What the Trump Administration's Proposed Rollback of Wetlands Regulations Means for the Chesapeake Bay Region" (December 12, 2018), which uses laser mapping data collected by federal researchers and the University of Maryland, there are 34,560 acres of scattered wetlands called "Delmarva potholes" on the Delmarva Peninsula that would be no longer be subject to federal protections under the proposed revised definition of "waters of the United States." These wetlands help reduce agricultural runoff pollution into the Chesapeake Bay. Do you agree that removing federal protections could mean less flood protection for infrastructure on Maryland's Eastern Shore and more pollution flowing into the Chesapeake Bay and its tributaries?
- 84. *OAR:* During the hearing, there was disagreement about whether California should be able to set its own standards for fuel economy and tailpipe carbon dioxide emissions from new passenger cars and light trucks. Please state how you will protect the ability of states that have adopted California's new vehicle emissions standards under section 177 of the Clean Air Act, including Maryland, to maintain their commitments to air quality?
- 85. *OAR:* Maryland state officials asked the EPA to reconsider its decision not to impose tougher pollution standards on certain Midwestern power plants, despite documentation that their emissions contribute significantly to Maryland's ground-level ozone pollution problem, about two-thirds of which is estimated to come from out-of-state sources, and that emission controls are already installed. Will you work with the State of Maryland in order to ensure that federal health-based air quality standards protect downwind states?
- 86. *OCSPP:* Will you work with Congress to finalize a ban on the organophosphate insecticide chlorpyrifos? Please explain your position.

Senator Duckworth:

87. *OW/R5*: I am extremely concerned that U.S. Environmental Protection Agency (EPA) is failing to meet its statutory duties when issuing and reviewing permits. I am also concerned that EPA political staff are failing to adequately address concerns raised by career staff regarding impacts of industrial pollution on the Great Lakes.

EPA Region 5 reportedly provided a Foxconn facility, to be located in South-east Wisconsin, latitude to draw millions of gallons of water from Lake Michigan and to negatively impact adjacent wetlands. Similarly, EPA career staff have raised concerns regarding the Polymet Mine's water permit application in Minnesota, which remain unaddressed. Public reports indicate that EPA Region 5 staff prepared comments raising concerns with Polymet's water pollution permit application, but were discouraged by political appointees from sharing their concerns with the Minnesota Pollution Control Agency (MPCA).

- Will you commit to immediately releasing comments or concerns raised by EPA staff regarding the Foxconn project and the Polymet Mine application?
- 88. *OAR:* The Renewable Fuel Standard (RFS) directs EPA to set annual Renewable Volume Obligation (RVO) levels. These blending mandates increase each year until 2022. However, under the Trump Administration, EPA has provided dozens of "hardship" waivers, reducing the mandate by billions of gallons of renewable fuels. EPA's abuse of these hardship waivers have financially harmed farmers in Illinois while lining the pockets of our Nation's most profitable oil companies. Last year, EPA proposed a "reset" regulation for the RFS triggered by its abuse of these waivers.
 - What is your timeline for the release, public comment period and final rule of the reset regulation? How will EPA determine future RVO target levels? Do you expect EPA to reduce RVO target levels for conventional, advanced or cellulosic biofuels? Please identify which categories of biofuel will be impacted by the reset regulation.
- 89. *OAR*: Part of EPA's obligation under existing law is to identify, assess and register new forms of renewable fuel for the Renewable Identification Numbers (RIN) Market. However, EPA appears to have a multi-year backlog for congressionally-approved registration and pathway applications.
- 90. *OAR*: How many registrations and pathway applications are currently pending under the RFS? How many registrations and pathway applications did EPA approve in fiscal years 2017 and 2018? What is delaying the approval of applications and how will you address this backlog?

Senator Ernst:

91. *OCSPP*: Under the Coordinated Framework for the Regulation of Biotechnology, the Department of Agriculture, the Food and Drug Administration, and the Environmental Protection Agency have regulatory authority over the products of plant biotechnology. EPA's regulatory authority falls under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and is specific to "plant incorporated protectants," or "PIPs." New breeding methods such as gene editing allow plant breeders to work within a plant's gene pool to make changes that could have occurred naturally or through conventional breeding, albeit more precisely and efficiently.

USDA recognized this in Secretary Perdue's March 2018 policy statement on plant breeding innovation. This includes methods such as gene editing that will be increasingly used by plant breeders to produce new plant varieties that are indistinguishable from those that could be developed through traditional breeding methods. Under FIFRA, EPA has the statutory authority to clarify the existing exemption for PIPs derived through conventional breeding includes those applications of plant breeding innovation, such as gene editing that could be achieved through conventional breeding.

- a. Will EPA commit to coordinating with USDA and FDA to ensure a clear and consistent regulatory pathway for products of plant breeding innovation, such as gene editing, in a way that does not stifle innovation in U.S. agriculture?
- 92. *OAR:* In several recent meetings with me, you committed to proposing a rule that would provide relief to the glider truck industry. When do you expect this rule to be proposed? Please provide an approximate date.
- 93. *OAR*: At your confirmation hearing, you indicated that lower RIN prices did not necessarily mean that there is less "economic hardship" for small refineries, and that RIN prices were just "one factor" in determining whether or not a refinery faces a "disproportionate economic hardship" so as to justify receiving an SRE.
 - a. Besides purchasing RINs, what "other factors" contribute to obligated parties' costs in complying with the RFS?
 - b. Is there a scenario where lower RIN prices do not alleviate obligated parties' "economic hardship" under the RFS?
- 94. *OAR*: At your confirmation hearing, you stated that it is not viable to "reallocate" biofuel volumes that are waived as part of the RFS's SRE provision to other obligated parties. Beyond resorting to reallocation, are there any other options at EPA's disposal to mitigate the negative effect that SREs have on biofuel demand? For example, in setting Renewable Volume Obligations (RVOs), does EPA have authority to:
 - a. Reduce the use of the cellulosic waiver authority to intentionally draw down the carryover RIN bank?
 - b. Allow for the partial backfilling of missing cellulosic volumes with non-cellulosic advanced biofuels to reflect the fact that hardship waivers will be more frequently granted?
- 95. *OAR*: In responding to a question on small refinery waivers, you noted that geography played a role in awarding these waivers. Where in the small refinery waiver section of the Renewable Fuel Standard does it state that geographic location is a factor that can be considered, or determinative, in the decision to issue a small refinery exemption?
- 96. *OAR:* Well into 2017 both the Obama and Trump Administration's readily reviewed and approved facility registrations to produce cellulosic ethanol from corn kernel fiber through a peer-reviewed process. However, since November of 2017 several new registrations for cellulosic production utilizing corn kernel fiber technology have been delayed indefinitely for approval, since EPA has decided to not accept peer-reviewed methods as provided in statute by the Renewable Fuel Standard for approving registrations, even when the registrations use the same methods as the Trump Administration had already accepted.

The delays caused by EPA has created unnecessary uncertainty for the ethanol industry, technology providers, and their investors. As a result, tens-of-millions of gallons of cellulosic biofuels have not been produced, diminishing the demand for corn at a time

when our producers are facing low commodity prices. This hits Iowa particularly hard where more than 15 ethanol plants are already making cellulosic ethanol derived from corn kernel fiber in their facilities, but because of the delays in registration they are unable to receive the D3 cellulosic RIN they are entitled to under the law. As a result of losing out on the D3 RIN, plants in my state have lost out on up to \$65 million in economic value that would greatly benefit our rural communities and farmers during this time of uncertainty for the agricultural industry.

- a. Will the EPA begin reviewing and approving new registration applications for cellulosic ethanol derived from corn kernel fiber under the existing peer-reviewed processes used prior to November 2017?
- b. What steps will the agency take to restart the review process of these registrations after a 15-month delay?

Senator Gillibrand

- 97. *OLEM/OW:* PFAS pollution has been linked to very serious health problems. Drinking water contamination from these chemicals in the village of Hoosick Falls, New York, and at least 172 other communities across the county, has been linked to a number of cases of cancer and thyroid disease. The Department of Health and Human Service's PFAS study released in June of last year revealed that the minimal risk level for human exposure to two types of PFAS chemicals, PFOA and PFOS, should be seven to ten times lower than the level previously recommended as safe by the EPA. In the EPA's new PFAS management plan submitted to the Office of Management and Budget, what level of human exposure to PFAS does the EPA recommend as safe?
- 98. *OW*: In the EPA's PFAS Management plan, what cleanup standard has been put in place to ensure the effective and timely remediation of PFAS chemicals in communities in New York and across the country?
- 99. *OW/OCSPP*: If confirmed, will you commit to increase transparency about PFAS chemicals by adding those chemicals to the Toxic Release Inventory?
- 100. *OW*: When will the EPA begin the process of establishing an enforceable standard for PFAS under the Safe Drinking Water Act?
- 101. *OLEM:* It is my understanding that the EPA is close to making a decision on whether to issue a certificate of completion for the remedial actions carried out by General Electric under its consent decree for the Hudson River Superfund site. I am very concerned that the EPA may issue the certificate of completion despite the EPA's own acknowledgement in its draft 5-year review report that the remedy is not yet protective of human health and the environment. In December, the New York State Department of Environmental Conservation (NYSDEC) released a report based on extensive sampling, and found that in many instances, there has not been a significant decline in PCB concentrations in the Hudson River and its ecosystems.

The National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, and New York State—the three Natural Resource Trustees for the Hudson River—all have stated publicly that the cleanup is incomplete and that it will take decades longer than projected by the EPA for the river to meet the numeric goals of the 2002 Record of Decision. Will you hold off on issuing the Certificate of Completion until the numeric goals of the Record of Decision have been met and the remedy is protective of human health and the environment?

- 102. *OLEM*: Will you meet with relevant local stakeholders before you decide whether to issue the Certificate of Completion to have a more complete discussion of this issue?
- 103. AO/OAR: Have you personally read the Fourth National Climate Assessment?
- 104. AO/OAR: To date, how many briefings or discussions have you had with EPA employees on the topic of the Fourth National Climate Assessment since it was released in November?
- 105. AO/OAR: Have you been personally briefed by the EPA scientists and career staff who participated in the drafting and preparation of the Fourth National Climate Assessment?
- 106. AO/OAR: Please list all individuals not currently employed by the EPA that you have discussed the Fourth National Climate Assessment with, including but not limited to, members of the White House staff and other Administration officials, lobbyists, and business executives.
- 107. *OAR*: In your opinion, what are the key actionable findings for the EPA in the Fourth National Climate Assessment?
 - a. How do you intend to incorporate those findings into EPA you decision making should you be confirmed?
- 108. *OAR*: As Acting Administrator, what specific actions have you taken to date in response to the Fourth National Climate Assessment?
- 109. *OAR*: Is protecting the lives of pregnant women and children from mercury poisoning is an "appropriate and necessary" role for the EPA?
- 110. *OAR:* How is EPA calculating the benefits of protecting the health of pregnant women and children from mercury poisoning in its cost-benefit analysis for the proposed changes to Mercury and Air Toxics Standards?
- 111. *OAR*: Do avoided harms associated with a rulemaking, including reduced childhood development delays, need to be monetized to count as part of a cost-benefit analysis?

- 112. *OAR*: In evaluating the costs of a rulemaking, do you believe that externality costs for example costs to society and public health costs from impacts of a pollutant -- should be considered in addition to the financial costs of compliance?
- 113. *OCFO:* Will you support continued funding for the EPA's geographic programs, including the Long Island Sound Study and Great Lakes Restoration Initiative?
- 114. *OAR*: The interstate transport of ozone and particulate matter is a serious environmental and public health problem in New York. Cross-state air pollution contributes to death and illness in our state and damages our natural resources. Such pollution generated in upwind states also interferes with New York's ability to meet its legal obligation to attain the national standards set by EPA.
 - a. What impacts will the Clean Air Act regulatory actions taken by the EPA during the Trump Administration have on ozone and cross-state air pollution on downwind states like New York?
 - b. What is the scientific basis for your response to (a)?

Senator Markey:

- 115. *OCSPP:* As part of the recent revamp of the Toxic Substances Control Act (TSCA), the EPA received the specific authority to address high-risk uses of three extremely dangerous chemicals: trichloroethylene (TCE), methylene chloride, and N-methyl pyrrolidone (NMP). The Obama Administration proposed to ban several uses of these chemicals outright in 2016, but neither you nor former Administrator Pruitt have put a single one of these bans into effect.
 - a. Yes or no, does methylene chloride pose a danger to workers, like painters and builders, who handle that chemical?
 - b. Can you commit to ensuring that everyone is protected from this deadly chemical by finalizing the exact ban proposed by the EPA two whole years ago—which has yet to be done, even after Scott Pruitt publicly promised to do so?
- 116. *ORD/OCSPP*: The EPA Integrated Risk Information System (IRIS) program completed revisions of its formaldehyde assessment in the fall of 2017. In reports accompanying the Consolidated Appropriations Act of 2017, both chambers of Congress directed that the agency contract with the National Academy of Sciences (NAS) to conduct an external peer review of the revised IRIS formaldehyde assessment. Accordingly, EPA has already provided \$1 million to the NAS for this purpose. The January 2018 EPA IRIS report to Congress indicated that "IRIS plans to deliver an External Review of its Formaldehyde Assessment for public comment and peer review in FY18." I have repeatedly inquired about the status of the IRIS formaldehyde assessment and repeatedly requested that EPA advance the assessment to finalization—a process that involves intra- and inter-agency review, external peer review by the NAS, and public comment.

- a. Will the IRIS program continue to work on and finalize its formaldehyde assessment? If not, why not?
- b. Please provide the timeline and agenda items that will allow EPA to complete the remaining steps in the review process for the revised IRIS formaldehyde assessment.
 - i. When will the agency initiate the intra-agency review process?
 - ii. When will the agency initiate the inter-agency review process?
 - iii. When will the agency release the revised assessment for public comment and peer review?
 - iv. When will EPA finalize the IRIS formaldehyde assessment?
- c. Will you commit to providing the revised IRIS formaldehyde assessment to NAS for peer review by no later than the end of calendar year 2019?
- d. Please explain why formaldehyde is absent from the 2018 IRIS Program Outlook.
- e. Please explain the process used to develop the 2018 IRIS Program Outlook, from first inception to completion. In your response, please identify the program and regional offices, including the names of specific individuals, consulted or otherwise involved. Please also identify any other organizations and specific individuals consulted or otherwise involved.
- 117. *AO/ORD:* To what extent, when, and in what capacity was David Dunlap, Deputy Assistant Administrator for Research and Development in EPA's Office of Research and Development, involved in the development of the 2018 IRIS Program Outlook? Please be very specific.
- 118. *OAR*: Mr. Wheeler, you wrote in your testimony that "[t]here is no more important responsibility than protecting human health and the environment."
 - a. Would the proposed Mercury and Air Toxics Standards (MATS) rule you proposed result in less mercury being emitted from power plants, yes or no?
- 119. *OP/ORD*: The Harvard "Six Cities" study, which linked air pollution and mortality risk, is a key study used in assessing many air quality regulations. In 2011, the EPA estimated that the control of particulate air pollution saved 160,000 lives in 2010, and that it will save 230,000 lives in 2020.
 - a. Under the EPA's proposed "Strengthening Transparency in Regulatory Science" rule, would the EPA be able to use the Six Cities study?
 - b. As Administrator, do you see any danger in moving forward with the "Strengthening Transparency in Regulatory Science" rule and eliminating the use of studies like the Six Cities study?
- 120. *ORD:* Do you commit to allowing EPA scientists to continue to conduct research free from political interference and communicate with the public about their findings, including discussing it at conferences and with the media?

- 121. *ORD*: At a recent meeting of the EPA Clean Air Scientific Advisory Committee (CASAC), multiple members of CASAC expressed doubt that they had the scientific experience to manage reviewing the science on particulate matter, which includes divergent scientific fields from epidemiology, to toxicology to data science to instrumentation.
 - a. Do you still believe that this CASAC has the requisite expertise to provide you with advice on particulate matter?
 - b. Epidemiology is a key subject for assessing the health impacts of particulate matter such as early death and cardiovascular illness, yet not a single epidemiologist is on CASAC. How can CASAC adequately assess the science on particulate and health, when its members do not have expertise in key fields like epidemiology and when there is no particulate matter review panel?
 - c. Has CASAC consulted with outside experts on PM and ozone standards? If so, with whom?
- 122. *OGC*: Under the Whistleblower Protection Enhancement Act of 2012, any non-disclosure agreement, whether written or oral, must include statutory language notifying employees of their whistleblower rights.
 - a. How does the EPA consistently make its employees aware of this right? Please provide examples.
 - b. If there was an official finding, internally or externally, that a whistleblower was retaliated against by a member of your staff for a lawful disclosure, how would you respond and what consequences would you recommend that the retaliator face?

Senator Merkley:

123. *OAR*: In 2009 the EPA issued under its Clean Air Act authority a science-based finding that greenhouse gas emissions endanger public health and welfare. This finding was made after a long public comment period with thousands of comments received and considered.

In *Massachusetts v. EPA*, the Supreme Court held that "greenhouse gases fit well within the Clean Air Act's capacious definition of 'air pollutant,'" and noted that the Act defines "welfare" similarly broadly to include effects on weather and climate. EPA has issued a request for comment on developing a new endangerment finding under Section 111(b) of the Clean Air act for "an already listed category" of pollutant. Revisiting this process would be unprecedented.

Will you commit to respecting the previous scientific process and commit to not revisiting the EPA's 2009 greenhouse gas endangerment and contribution findings?

124. *OAR*: The Mercury and Air Toxics Standards (MATS) have been tremendously successful and that utilities have already invested significant resources towards abating this type of pollution, and support keeping the standard in place.

But on December 28th, the EPA, under your leadership, said it was no longer "appropriate and necessary" to regulate mercury and toxic air pollution from coal- and oil-fired plants.

In the *Michigan vs. EPA* case in 2015, the Supreme Court ruled that the EPA should have considered the costs at the same time that it decided whether it is was "appropriate and necessary" to regulate hazardous air emissions from power plants. The EPA complied with the ruling by submitting a Supplemental Finding in 2016 to the MATS rule, which examined industry costs and public health benefits.

Under the Trump Administration, the EPA then chose to reopen this Supplemental Finding and focus on attempting to undermine this vital health protection. You claimed that this done under the Supreme Court's mandate.

Please state the exact legal mandate that directs the EPA to revise the MATS rule that was not fulfilled by the EPA's Supplementation Finding in 2016.

125. *OAR*: You further stated that the Clean Power Plan was withdrawn in compliance with the courts. However, the Supreme Court has never issued a determination on the legality of the Clean Power Plan. Instead, the Supreme Court simply stopped implementation while litigation continued. It has three times upheld the EPA's authority to set limits on carbon pollution.

Additionally, the Affordable Clean Energy plan proposed has been shown by the study "The Affordable Clean Energy Rule and the Impact of Emissions Rebound on Carbon Dioxide and Criteria Air Pollutant Emissions" published in *Environmental Research Letters*, to potentially increase pollution in certain states.

Please provide the EPA's analysis showing the impacts on individual plants and state level emissions.

If EPA career staff disagree with the findings of the *Environmental Research Letters* study, I ask that you provide the scientific and cost-benefit justification for the disagreement.

126. *OAR*: In the New Source Performance Standards (NSPS), EPA reduced requirements on monitoring fugitive methane emissions. The EPA finds it would increase the leakage of methane by 380,000 short tons and additionally allow increases in the release of VOCs and other harmful air pollutants.

Why were the increases in VOC and other harmful air pollutants not included in the costbenefit analysis?

127. *OAR*: Numerous studies including "Aerial Surveys of Elevated Hydrocarbon Emissions from Oil and Gas Production Sites" published in *Environmental Science and Technology*,

and "Assessment of methane emissions from the U.S. oil and gas supply chain" published in *Science* have shown methane leak rates to be higher than EPA accounts for.

Given this fact, what is the justification for weakening these standards?

If the methane emissions leak rate of 2-3% were used, instead of the 1.4% EPA currently uses, what would be the impact on this rule and other methane emissions rules?

128. *OAR*: In 2014, the EPA created the "electric pathway" under the RFS program to accelerate the adoption of electric vehicles, the development of charging infrastructure, and the production of biogas electricity by allowing for the creation of "electric-RINs" or "E-RINs".

Since the program's creation, no E-RIN applications for this pathway have been approved, and there are at least six applications pending. These applications have been submitted by vehicle manufacturers, charging stations, and third party clearinghouses, many of whom have been waiting years to receive a decision from your agency.

Does EPA plan to address an electric RIN-generation program in the near future?

Will you commit to addressing this backlog and giving these applicants a response within 90 days?

129. *OAR:* The EPA has proposed a rulemaking that will modify applicable volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuels for the years 2020-2022. As part of this rulemaking, the agency will also be proposing volume requirements for biomass-based diesel for 2021 and 2022. This proposed rulemaking includes several regulatory amendments designed to provide clarity and increase opportunities for renewable fuel production.

Can you explain the method by which the EPA intends to clarify or make changes to those existing regulations?

In addition, can you confirm whether EPA intends to include clarifications to the regulations related to existing alternative pathways for advanced and cellulosic biogas?

130. *OCSPP:* The updated Toxic Substances Control Act (TSCA) is supposed to regulate thousands of chemicals used industrially, and in an array of consumer products like paint, cleaning products, mattresses, clothes, insulation, and more. But under both former Administrator Pruitt and under your leadership, the Environmental Protection Agency has taken every opportunity to undermine, not enhance, chemical safety.

In evaluating whether a new chemical might pose an unreasonable risk, the law requires EPA to rigorously review both the intended use of the new chemical and any future uses that are "reasonably foreseen," per the definitions of the conditions of use.

However, the EPA announced in 2017 that the TSCA new chemical review process would <u>not</u> include a consideration of the chemical safety risk across all uses of a new chemical, and instead would allow new chemicals to enter the marketplace after considering only the intended uses identified by the industry applicant

Isn't this in direct contravention of what the law requires?

131. *OCSPP:* Chemicals are often used for purposes that were never initially considered by the original manufacturer. Research has linked exposure to the chemicals in this now ubiquitous product to health effects ranging from reduced fertility to hormone disruption and DNA damage.

I'm concerned that, rather than evaluating the risk a new chemical may pose in the future, EPA is considering only the potential risk from the uses that the first manufacturer of the chemical initially identifies, even though if that chemical is allowed on the market on that basis without any conditions, other manufacturers are likely to use the chemical for other purposes.

Under this approach, EPA would never consider the combined risks from both intended and other reasonably foreseen uses of the chemical. This could result in a failure to address all of the potential risks of the new chemical, and inadequate protection of human health and the environment.

How do you plan on prioritizing EPA resources to ensure that chemical reviews are implemented as required by TSCA?

If confirmed, will you commit to including in both new and existing chemical risk evaluations ALL reasonably foreseeable future uses of chemicals under review?

132. *OCSPP*: Recently, there have been a number of actions taken by the EPA that undermine resource allocation and implementation of the TSCA reform. The final fee rule establishes the "user fees" Congress authorized EPA to collect from chemical manufacturers and processors to help defray EPA's costs for implementing TSCA. This rule dramatically underestimates costs and lets the industry get away without paying its fair share.

In that fee rule, the agency grossly underestimated not only the costs of reviewing Confidential Business Information claims, but entirely excluded its costs to provide ready access to CBI required under the new TSCA to state governments and other qualified persons, or to provide public access to information that does not qualify for protection from disclosure.

If confirmed to lead the EPA, will you commit to prioritizing sound TSCA implementation by fighting for full funding for the agency, maintenance of and support for the Office of Research and Development's scientific work relevant to the TSCA program, and funding and staffing levels necessary to carry out the statute in a balanced way?

133. *OCSPP*: Asbestos is a known carcinogen that has been banned in more than 60 countries, because there is no safe or controlled use of asbestos.

Would you agree that there is no safe or controlled use of asbestos?

134. *OCSPP:* EPA has proposed a significant new use rule (SNUR) for asbestos that opens the door to resuming several uses of asbestos that ended many years ago.

Instead, would you commit to opposing the asbestos SNUR and permanently banning all uses of asbestos under section 6 of TSCA?

135. *OCSPP*: Millions of people are still exposed to asbestos every single day, in schools, commercial buildings, construction sites, factories, and homes. Yet EPA's ongoing asbestos risk evaluation does not account for the existing presence and ongoing use of asbestos.

Do you support EPA's decision to ignore this risk by removing it from the scope of the risk evaluation?

Will you pledge to work with this Committee to include legacy use and exposure in EPA's ongoing risk evaluation?

136. *OCSPP:* The risk evaluation also excludes several types of cancer and lung disease, along with all exposure to asbestos resulting from its release into the environment. Think about the thousands of first responders exposed to asbestos dust after the tragedies of September 11th, 2001, and the resulting cases of lung cancer and mesothelioma. That type of exposure is being excluded from EPA's evaluation.

Will you commit to removing these exclusions, and instead conducting a thorough and comprehensive evaluation?

137. *OCSPP:* The semiconductor industry in Oregon is a major employer and economic driver. Approximately 24,000 Oregonians are employed in the semiconductor industry, and it is the state's largest export.

Several Oregon companies have expressed concern about the shutdown and the potential impact it could have on the review and approval of specialized chemicals needed for semiconductor manufacturing. The industry relies on EPA approval of chemicals with specific functional and performance attributes in its highly advanced and complex manufacturing operations.

The primary family of chemicals that has triggered concern for companies in my state are known as onium compounds, which are primarily used as photoacid generators in the photolithography process used to manufacture semiconductors. Some of these chemicals are currently in use, some of them are under evaluation. In some cases, chemicals are

approved for a temporary period of time (e.g., 6 months), and there is a risk that this period may expire without EPA having the ability to extend the approval.

What is EPA doing to assure these companies and the public that new chemicals are being reviewed in a timely manner and that time-limited approvals will not lapse during this shutdown?

138. *OLEM/OMS:* The Office of Land and Management, which oversees cleanup of toxic Superfund sites, is currently down from 468 staffers to 3.

Has Superfund site monitoring or oversight been impacted or diminished in any way during the government shutdown as compared to the same time period last year?

139. *OLEM*: In 2017, EPA adopted a cleanup plan for the Portland Harbor Superfund site in my home state of Oregon, one of the largest sites currently on the EPA's National Priorities List.

In response to intense lobbying from two Potentially Responsible Parties of contamination at the site, EPA has proposed weakening the cleanup standards for the entire cleanup based on a new estimate of cancer risks from a single contaminant – benzo-a-pyrene, a polycyclic aromatic hydrocarbon or PAH – even though other contaminants still persist at the site.

EPA is making this change with incomplete information, before any testing, monitoring, or design is completed for the project – which may reveal additional need for strong cleanup standards. Furthermore, the cleanup plan already provides for a five-year technical review process whereby this new risk assessment can be considered, alongside other public health concerns, to properly weigh whether reduced cleanup is necessary.

Why is the EPA weakening Superfund cleanup standards at the Portland Harbor Superfund site, thereby exposing the public to greater health risks, without the bare minimum information including: baseline monitoring data, an analysis of how this change will increase health risks from fish and clam consumption, or any analysis of cumulative risks posed by the chemical cocktail in the Harbor?

Does the Portland Harbor Superfund site remain a priority for EPA and are you committed to ensure that adequate resources exist for the Agency to support remediation efforts undertaken by PRPs at the site?

140. *OAR:* Last year, EPA and NHTSA released a proposal to roll back the Corporate Average Fuel Economy (CAFE) standards. The proposal would freeze fuel efficiency standards, even though many automakers have already invested in technology research and investment. It would also undermine states' abilities to set higher standards for themselves. And it would result in a drastic increase in carbon pollution.

In order to boost fuel efficiency, at least 1,200 U.S. facilities and 288,000 American workers are building parts and materials. U.S. automakers have invested nearly \$64

billion in these facilities. Your proposal would put these investments, these factories, and these workers in jeopardy.

Will you commit to working with the states that have their own rules in place and NOT preempting those states that maintain stricter standards?

- 141. *OAR*: Based on the sources you have consulted, please describe the scientific consensus on the role of climate change and its relation to more severe wildfire seasons.
- 142. *OAR:* In your testimony, you said you would "continue to read the literature" regarding the causes of catastrophic wildfires. I submit the following articles, including the National Climate Assessment, for your review, which find that climate change has increased the area burned in the Western United States:
 - a. Vose, J.M., D.L. Peterson, G.M. Domke, C.J. Fettig, L.A. Joyce, R.E. Keane, C.H. Luce, J.P. Prestemon, L.E. Band, J.S. Clark, N.E. Cooley, A. D'Amato, and J.E. Halofsky (2018). "Forests." In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, pp. 232–267. doi: 10.7930/NCA4.2018.CH6.
 - b. Abatzoglou, J. T., & Williams, A. P. (2016). Impact of anthropogenic climate change on wildfire across western US forests. *Proceedings of the National Academy of Sciences*, 113(42), 11770-11775.
 - c. Keeley, J., & Syphard, A. (2016). Climate change and future fire regimes: examples from California. *Geosciences*, 6(3), 37.
 - d. Keyser, A., and A. L. Westerling. (2017). Climate drives inter-annual variability in probability of high severity fire occurrence in the western United States. *Environmental Research Letters*, 12(6), 065003.
 - e. Davis, R., Yang, Z., Yost, A., Belongie, C., & Cohen, W. (2017). The normal fire environment—Modeling environmental suitability for large forest wildfires using past, present, and future climate normals. *Forest Ecology and Management*, 390, 173-186.

After reading these articles, do you still believe that climate change has a limited role in the changing patterns of wildfires, including longer, more severe wildfire seasons?

Senator Rounds:

- 143. *OAR*: Acting Administrator Wheeler, under the RFS, the EPA is granted expanded discretionary authority to set volume obligations after 2022. If confirmed, you very well may be leading the EPA at that particular point in time.
 - a. In your professional opinion, what is the range of discretionary authority granted to the EPA after 2022?
 - b. How do you anticipate conventional corn ethanol being impacted after 2022?

- c. We need a thriving biofuels industry for a variety of national security reasons, including energy independence and diversity. Do you believe that Congress needs to consider statutory changes to account for the negative possibilities post-2022?
- 144. *OCSPP:* Mr. Wheeler, our trade partners are currently deciding how they will approach the use of gene editing in agriculture. To minimize the chance of trade disruptions, it's critical that the U.S. government have a consistent position across agencies that we can encourage other nations adopt. Will EPA collaborate with USDA and FDA in a timely manner to develop a consistent position? Moreover, is this a matter we can expect EPA to commit sufficient resources to moving forward?

Senator Sanders:

Vermont

145. *OW*: In my questions for the record for the hearing to consider your nomination for EPA Deputy Administrator, I asked whether you would commit to continuing the EPA's support for the clean-up of phosphorus in Lake Champlain through the Total Maximum Daily Load (TMDL) standard that the agency established in 2016. You responded that you would "work within the appropriations levels provided to the EPA by Congress."

In your time thus far at the EPA, have you found the appropriations levels provided to the EPA by Congress to be sufficient to ensure that the EPA's Clean Water Act obligations are satisfied in regard to phosphorus levels in Lake Champlain? If so, please provide a timeline for when the EPA will fulfil its obligations under the TMDL. If not, please describe the funding amounts and specific areas for which congressional appropriations have been insufficient to fulfil the EPA's Clean Water Act obligations, as well as your plan for requesting sufficient funds in the EPA's FY2020 budget request.

Climate Change

146. *OAR:* In November 2018, the U.S. Global Change Research Program released the Fourth National Climate Assessment (Assessment). Do you agree with the Assessment's findings that climate change will cause the following impacts?

If so, please describe how the EPA has factored in each impact to its decision-making in regard to each of the 33 deregulatory actions the EPA has taken under the Trump administration.

- a. An increase in extreme weather that is expected to damage infrastructure, ecosystems, and social systems, particularly impacting communities and people that were already vulnerable.
- b. A decrease in quality and quantity of water available for people and ecosystems due to intensifying droughts, heavy downpours, reduced snowpack, and poor surface water quality.

- c. An increased risk of waterborne and foodborne diseases, heat-related deaths, allergic illnesses, vector-borne diseases, and mental health degradation, which are expected to have the greatest impact on older adults, children, low-income communities and communities of color.
- d. A negative impact on the economic, cultural, and physical well-being of Indigenous peoples.
- e. Degradation of our ecosystems and their services, such as "...clean air and water, protection from coastal flooding, wood and fiber, crop pollination, hunting and fishing, tourism, and cultural identities."
- f. Declining crop yields, worsening livestock health, and decreasing economic vitality of rural communities.
- g. An increase in power outages, fuel shortages, and service disruptions due to increased stress on our already aging and deteriorating infrastructure.
- h. A continued trend of "rising water temperatures, ocean acidification, retreating arctic sea ice, sea level rise, high-tide flooding, coastal erosion, higher storm surge, and heavier precipitation events [that] threaten our oceans and coasts."
- i. A reduction in outdoor economies across the United States.
- 147. AO: During this hearing, I asked you whether you agreed or disagreed with President Trump that climate change is a "hoax." You responded by saying that you have not used the word "hoax" yourself. I took that to mean that you do in fact disagree with President Trump's characterization that climate change is a hoax, but I want to ask again, just to be clear: Do you agree with President Trump that climate change is a hoax? Please provide your answer in the form of a "yes" or "no."
- 148. *OAR*: During this hearing, I asked whether you are concerned by rising sea levels. You responded that rising sea levels are a concern and that you believe in adaptation (but not mitigation) "absent additional congressional authority." The Supreme Court in *Massachusetts v. EPA* found that the EPA does in fact have statutory authority, and indeed a statutory obligation, to regulate the carbon dioxide emissions that cause climate change.

Given that the EPA does in fact have congressional authority to mitigate climate change by regulating carbon dioxide emissions, would you like to alter your testimony?

Given that the EPA does in fact have congressional authority, and indeed a statutory obligation, to mitigate the causes of climate change, please provide your plan, including a timeline, for issuing regulations on greenhouse gases to bring the United States in line with carbon pollution emissions reduction targets prescribed by the Intergovernmental Panel on Climate Change's "Global Warming of 1.5°C" report.

Clean Power Plan Replacement

149. *OAR:* On August 21, 2018, the EPA released its proposal to repeal the Clean Power Plan. By the EPA's own estimates, this plan would drastically increase carbon and other pollution emissions from power plants as well as cause as many as 1,400 additional premature deaths, 48,000 new cases of asthma, and 21,000 new missed school days each year compared to the Clean Power Plan. In order to justify this new, weaker rule, the EPA altered its cost-benefit analysis methodology to minimize the new rule's projected damages to the environment and public health. This methodology is described in the EPA's regulatory impact analysis "Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Unites; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program."

One way in which the EPA's analysis was altered was to ignore the health effects from direct exposure to sulfur dioxide, nitrogen dioxide, and hazardous air pollutants like mercury and hydrogen chloride. According to the EPA's regulatory impact analysis, the EPA did not include these factors in its proposal to repeal the Clean Power Plan due to "data, resource, and methodological limitations," despite their clear negative health impacts.

Given that the EPA's failure to properly consider these factors clearly violates its mission to protect human health and the environment, as well as its statutory obligation under the Clean Air Act to protect and improve the nation's air quality, please describe your plan, including a timeline, for withdrawing the EPA's proposal to repeal the Clean Power Plan.

Toxics

150. *OW/OCSPP/OP:* Elevated and unsafe levels of perfluoroalkyl substances (PFAS) have been found in hundreds of sites and at least one municipal water system in Vermont, and have contaminated public water and other natural resources for an estimated 16 million people nationally.

In June 2018, the Agency for Toxic Substances and Disease Registry (ATSDR) released a draft study concerning the health effects of PFAS, including, but not limited to, effects on the growth, learning, and behavior of children, increased cholesterol levels, and increased risk of cancer. Prior to the study's release, Politico reported that officials from the White House, the Office of Management and Budget, the EPA, and the Department of Defense intervened to delay the release of the study in order to avoid a "public relations nightmare." I joined with several of my Senate colleagues in writing to then-Administrator Pruitt to request information on the EPA officials who intervened in order to delay the release of the ATSDR study. He responded by stating that the EPA did not have authority to release the ATSDR study, which is an answer that did not adequately respond to my concerns. Regardless of the EPA's authority to release or not release ATSDR studies, were you aware of any EPA officials making efforts to delay the release of this ATSDR study? If so, please provide all internal documents and communications in

your agency's possession regarding any internal deliberations or discussions about this study for the record. If you are confirmed, will you commit to ensuring that the EPA does not engage in any activities which seek to delay the public release of scientific studies and reports?

- 151. *OW*: The ATSDR study found that minimal risk levels for certain PFAS chemicals in drinking water should be significantly lower than the EPA's lifetime health advisory level of 70 parts per trillion. Based on the levels identified in the ATSDR study, please explain your plan, including a timeline, for updating the EPA lifetime health advisory level to comport with this new science on the effects of PFAS on human health.
- 152. *OW:* Several states, including my home state of Vermont, have set health advisories for drinking water containing PFAS chemicals that are significantly more stringent than the EPA's lifetime health advisory level. The most recent update to the Toxic Substances Control Act (TSCA) contained a provision that protects states that had more stringent standards on the books before April 22, 2016 (Sec. 13 State-Federal Relationship, 15 USC § 2617(e)(1)(A)). If confirmed, will you commit to avoiding any actions that would preempt states' ability to enforce health advisory levels for PFAS enacted before April 22, 2016 that are more stringent than the EPA's standards? If you will not make this commitment, please explain why you believe that TSCA prevents states from enforcing more stringent requirements the state had established before April 22, 2016.
- 153. *OW*: According to the EPA website, the EPA expected to release a PFAS management plan by the Fall of 2018. During this hearing, you stated that the release of the plan has been further delayed by the current partial government shutdown. However, the plan was clearly also delayed by other factors given that the partial government shutdown did not begin until late December. Please describe all the factors, beside the current partial government shutdown, that have caused the EPA to fall behind schedule in developing this plan to address the presence of toxic PFAS chemicals in communities throughout the country.
- 154. *OW*: Given that the EPA's current budget to manage PFAS is clearly insufficient to carry out the work needed to craft the PFAS management plan, please describe your plan to increase the EPA's FY2020 budget request relative to FY2019 to ensure that it can release the PFAS management plan a timely manner.
- 155. *OCSPP*: In April 2017, the EPA decided against continuing the work of the previous administration to ban the pesticide chlorpyrifos, which poisons farm workers, children and rural communities. Chlorpyrifos is toxic and can cause neurodevelopmental harms in children and prenatal exposure can cause lower birth weight, reduced IQ, loss of working memory, attention disorders, and delayed motor development. No amount of it is safe in our food or drinking water. Based on the EPA's mission to protect human health and the environment, please outline the EPA's plan, including a timeline, to establish a ban on chlorpyrifos.

Native Rights

- 156. *OITA:* The Fourth National Climate Assessment projects that Indigenous peoples will suffer some of the worst impacts of climate change due to their dependence on natural resources for their livelihoods and economies. As our natural resources dwindle, many Indigenous peoples may be forced to relocate, risking their cultural and community continuity. Please describe your plan for meeting Indigenous peoples' economic and environmental needs, particularly as they pertain to the preservation of natural resources and tribal treaty rights.
- 157. *OITA*: The EPA's "Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights" requires the EPA to respect tribal treaty rights, which in part means consulting with any tribes which may be impacted by the actions of the federal government.

Please describe the specific actions you have taken, as both EPA Deputy Administrator and Acting EPA Administrator, to ensure that tribes have been consulted and that their input is reflected in the actions taken by the EPA.

Please list the individuals and their affiliation with whom you have met or consulted during your time as both EPA Deputy Administrator and Acting EPA Administrator regarding tribal treaty rights.

If confirmed, will you commit to consulting with tribes regarding all EPA actions which may impact tribal treaty rights, lands, culture, and natural resources? If you will not make this commitment, why are you willing to violate the EPA's policy on tribal treaty rights?

Clean Water Rule

158. *OW*: On December 11, 2018, the EPA proposed a revised definition to "Waters of the United States," which would effectively repeal what is popularly known as the "Clean Water Rule." Given that the EPA's proposal will put almost 117 million Americans' water supply at risk, which runs counter to the EPA's mission to protect human health and the environment, please provide a plan, including a timeline, for withdrawing the EPA's proposed repeal of the Clean Water Rule.

Senator Shelby:

159. *OAR:* The Consolidated Appropriations Act of 2018 included language directing the Secretaries of Energy and Agriculture and the Administrator of the Environmental Protection Agency to establish clear and simple policies that reflect the carbon-neutrality of forest bioenergy and recognize biomass as a renewable energy source provided the use of forest biomass does not cause the conversion of forests to non-forest use. I appreciate the EPA issuing guidance in April 2018 stating that future EPA regulatory actions for energy production from stationary sources will recognize biomass from managed forests as carbon neutral. I also appreciate the tri-agency statement in October 2018 affirming these principles.

Mr. Wheeler, would please provide an update on the EPA's progress towards implementing a regulation on carbon neutrality of biomass?

Senator Van Hollen:

- 160. *OW*: Last week on January 10th, Energy and Environment Daily reported on some of the trickle down impacts of the shutdown on the functions of the EPA. In that article, Lisa Feldt of the Chesapeake Bay Foundation noted her concerns with the looming deadline in April of this year for the next step in Chesapeake Bay TMDL implementation—the third and final round of watershed implementation plans. Do you expect the EPA to be able to meet this critical April deadline for the Chesapeake Bay if the shutdown continues?
- 161. *OECA*: Last week on January 9th, the New York Times reported that the EPA has furloughed most of its roughly 600 pollution inspectors and other workers who monitor compliance with environmental laws. These staff are responsible for detecting violations that endanger human health.

These pollution inspections halted on December 24, 2018.

Eric Schaeffer, a Maryland resident and former Director of EPA enforcement, has said that the shutdown from Dec 16, 1995 to Jan 6, 1996 lead to one of the worst years ever at the EPA in terms of numbers of inspection and enforcement; and that it bogged down EPA inspections for months—not just up until the government reopened.

If the shutdown ends the day you submit your answers to these questions for the record, what impact do you expect the shutdown to have on the number of inspections and enforcement actions the EPA is able to conduct compared to a non-shutdown scenario? What will be the impact if the shutdown continues for another 30 days after the date you submit your answers to these questions for the record?

162. *OMS/OCFO*: A New York Times article from December 2017 found that at that time, over 700 employees had left the EPA since the beginning of the Trump Administration as they are disheartened by the Agency's direction. Of the employees who had quit, retired or taken a buyout package, more than 200 are scientists. An additional 96 are environmental protection specialists, a broad category that includes scientists as well as others experienced in investigating and analyzing pollution levels. Most of the employees who have left are not being replaced. Agency staff said they believed the Trump administration was purposely draining the EPA of expertise and morale.

What is the impact of the drain of scientists out of the EPA in terms of the Agency's long-term abilities to develop and use the best available science? What will the impact of this loss of scientific expertise be on the Agency's ability to protect public health?

How do you plan—if confirmed as EPA Administrator—to make your employees feel valued and boost the alarmingly low morale at your Agency? In which areas, if any, will the Agency prioritize hiring of new employees?

ORD: EPA announced a plan to reorganize the Agency, which includes a plan to eliminate the Agency's science adviser office and merge it into a division in the Office of Research and Development, which EPA claims is a move to "streamline" the Agency. Why would this move not diminish the role of science in decision-making at the EPA?

163. *OAR*: As you know, under the *Clean Air Act*, both the EPA and the state of California have authority to regulate greenhouse gas emissions from the tailpipe. Under Section 177 of this act, states can choose, as twelve have done to date, to adopt California's standards in lieu of federal requirements.

Maryland is one of 12 states that follow California's lead on their 2022-2025 fuel economy standards.

The proposed rule that EPA released last year challenges the authority of states like Maryland to regulate emissions from vehicles in order to force a nationwide rollback of fuel economy and vehicle emission standards. This proposed revocation of California and the 12 states' authority is opposed by Maryland's Governor Larry Hogan. On October 26, 2018, Maryland Secretary for the Department of the Environment Ben Grumbles wrote you a letter in which he stated, "Maryland supports the principals of cooperative federalism and urges the agencies not to limit California's authority to adopt or enforce motor vehicle emissions standards or any other state's ability to adopt California's standards."

Can you commit today not to finalize clean car standards that attack state leadership on clean cars, either by revoking California's waiver to enforce its existing 2022-25 standards, or asserting that the Energy Policy and Conservation Act preempts state clean car standards?

164. *OECA*: Environmental enforcement numbers have decreased since the end of the Obama Administration. One reason for this is that no enforcement engineer or officer has been replaced in any of the 10 Regions.

How do you plan to ensure EPA enforcement is taking place while there are very few inspectors, enforcement officers and lawyers in place to bring enforcement cases in the regional offices? How will you work to address gaps in enforcement staff and initiate the hiring process?

165. *OCSPP:* Can you walk through the scientific method that, if confirmed, you would want the EPA to use for risk evaluations under TSCA to determine if chemicals have an unreasonable risk and should be regulated? My understanding is that EPA is currently working on draft risk evaluations for 10 chemicals including asbestos and 1-4 Dioxane.

Will EPA be using the Systematic Review framework for TSCA--even though scientists warn that it favors industry science? Will the EPA review include <u>all</u> uses, including

reasonably foreseeable and legacy uses, in both new and existing chemical risk evaluations?

- 166. *OAR/OP:* Regarding the MATS rule, in determining that it is no longer "appropriate and necessary" to require power plants to reduce their mercury and air toxic emissions, EPA has decided to base this decision only on some of the quantifiable benefits and all of the costs to industry. The costs EPA uses is also woefully out of date, about two times higher than actual costs. It seems to me that EPA is breaking the "arbitrary and capricious" test by ignoring the co-benefits and other benefits the agency cannot quantify. Under what legal basis, did EPA decide to ignore co-benefits and benefits like reducing birth defects and cancer rates when determining "appropriate and necessary"?
- 167. *OAR:* As most people know, mercury is a neurotoxin that effects the most vulnerable, children in the womb. Other air toxics like formaldehyde, arsenic and beryllium have long been known to cause cancer. Since you have determined that it is not "appropriate and necessary" to reduce our nation's largest sources of mercury and air toxics through its MATS proposal, does that mean you believe there is a safe level of mercury exposure for developing infants? If so, what are those levels? Is there a safe level of exposing children to carcinogens? If so, what are those levels?

Senator Whitehouse:

168. *OAR*: When we met in my office on January 15, you told me that your proposed rule to freeze the fuel economy and greenhouse gas (GHG) emissions standards for cars and light trucks would actually result in less carbon pollution in certain years than under the existing standards. You repeated this claim at your confirmation hearing.

However, according to your own rule, GHG emissions would rise under your proposal compared to the existing standards. This predicted increase in GHG emissions is discussed on Federal Register pages 43326 through 43330 of your proposed rule. Please cite to me any support in EPA's proposal for your statements that EPA's proposal would result in reduced GHG emissions compared to the existing standards. Note: please do not tell me what your experts may have told you; I am asking you to provide references from EPA's proposed rule that support your claim that EPA's proposal would reduce GHG emissions compared to the existing standards.

169. *OAR:* You also told me in our meeting that EPA's proposed rule to replace the Clean Power Plan (CPP) would result in almost exactly the same reduction in carbon pollution as the CPP. You repeated this claim at your confirmation hearing.

However, according EPA's proposed rule as printed in the Federal Register, GHG emissions would be higher under your proposal than under the CPP. This predicted increase in GHG emissions is discussed on page 44784.

Please cite to me any support in EPA's proposal for your statements that your proposal would result essentially the same GHG emissions reductions as the CPP. <u>Note: please do</u> not tell me what your experts may have told you; I am asking you to provide me

references from EPA's proposed rule that support your claim that EPA's proposal would result in the same GHG emissions reductions as the CPP.

- 170. *AO*: How many meetings with Trump administration officials for Bob Murray and/or Murray Energy did you arrange, attempt to arrange, and/or attend?
- 171. AO: Please list, with date, time, and people present (as applicable) every meeting with the Trump administration you arranged, attempt to arrange, and/or attended with or on behalf of Bob Murray and/or Murray Energy? Please also provide the time, date, and people present for any preparation sessions for such meeting(s).
- 172. AO: At how many of these meetings was the Murray "action plan" discussed?
- 173. AO: You told me at your first confirmation hearing on Nov. 8, 2017 that you didn't remember where you saw the Murray "action plan" and you didn't remember the context in which it was discussed. Do you stand by that answer today? If not, please correct the record.
- 174. AO: EPA announced that this June it will finalize amendments to the 2015 Coal Ash Rule, which incorporate elements of EPA's March 2018 proposal to weaken the protective standards of the rule, including eliminating the rule's nationwide cleanup standards. In March 2017, you met with Secretary Perry to discuss the Murray action plan which, among other things, proposed a complete suspension of the 2015 coal ash rule. The plan was accompanied, by six draft Executive Orders for President Trump that would further rescind coal safeguards. One Executive Order directed immediate suspension of the "operation and implementation" of the Coal Ash Rule, directed EPA to attempt to stop ongoing litigation against the agency concerning the rule, and instruct the EPA to amend the rule to prohibit citizen suits to enforce the rule.
 - a. Are you familiar with this Executive Order? ("Presidential Executive Order on Restoring the Rule of Law, Federalism, Economic Growth, and Reducing Regulatory Costs by Reviewing the Final Rule on Disposal of Coal Combustion Residuals from Electric Utilities (the "CCR Rule"), Published on April 17, 2015 By the United States Environmental Protection Agency, 80 Fed. Reg. 21302 (2015)")
 - b. Did you write or review this Executive Order?
 - c. If so, do you believe that you should recuse yourself from further review and oversight over EPA's efforts to weaken the Coal Ash Rule?
- 175. AO/OGC: The following questions relate to federal ethics laws and regulations:
 - a. President Trump promised to end corruption in Washington. Would you agree that applying and enforcing federal ethics laws and regulations, and the Trump "Ethics Pledge," are important tools to do that?
 - b. This is the second time you've come before the Senate for advice and consent. Would it be fair to say that by now you are personally familiar with federal ethics requirements?

- c. Are you aware that federal regulations and the Trump "Ethics Pledge" prohibit political appointees from working on particular matters on which they previously represented clients as well as from meeting with former clients?
- d. If you learned that an EPA employee violated federal ethics regulations or the Trump "Ethics Pledge," would you take this matter seriously?
- e. Do you promise to take all steps within your power to ensure that EPA employees abide by all applicable ethics requirements? Does that include disciplining employees who violate those requirements as appropriate?
- 176. AO: Did you ever bundle, solicit, or gather donations for any 501(c)(4), 527, political action committee, or any other outside spending group? If so, list the organizations by name, the dates during which you engaged in this activity, and the approximate amounts you raised.
- 177. AO: Do you commit to provide all information responsive to the previous question to EPA ethics officials so they can assess whether that activity raises conflicts of interest or an appearance that you cannot conduct your duties impartially?
- 178. You and I have discussed the serious economic risks of climate change the last two times we have met. I have provided you with numerous reports and articles detailing these risks.
 - a. AO/OW/OAR: The first of these economic risks is the risk of a coastal real estate crash. This is what Freddie Mac, the federal home mortgage backer, has to say about climate risk:

"[R]ising sea levels and spreading flood plains nonetheless appear likely to destroy billions of dollars in property and to displace millions of people. The economic losses and social disruption may happen gradually, but they are likely to be greater in total than those experienced in the housing crisis and Great Recession."

This is what the Union of Concerned Scientists has to say:

"In the coming decades, the consequences of rising seas will strain many coastal real estate markets – abruptly or gradually, but some eventually to the point of collapse – with potential reverberations throughout the national economy."

This is what the insurance industry trade magazine *Risk & Insurance* has to say:

"These bellwether locations [Miami, Atlantic City, and Norfolk] signify a growing and alarming threat; that continually rising seas will damage coastal residential and commercial property values to the point that property owners will flee those markets in droves, thus precipitating a mortgage value collapse that could equal or exceed the mortgage crisis that rocked the global economy in 2008."

Freddie Mac estimates that between \$238 billion and \$507 billion worth of real estate will be below sea level by 2100, and UCS estimates that nearly 2.5 million residential and commercial properties worth \$1.07 trillion will be at risk of

chronic flooding by 2100. The First Street Foundation studied the impact of rising seas and increased flooding on real estate in the southeast, and found that coastal real estate in the southeast has already lost \$7.4 billion in value since 2005 because of sea level rise.

Many of the rollbacks you've proposed since assuming the helm at EPA – freezing automobile fuel economy and greenhouse gas emissions standards, replacing the Clean Power Plan, weakening methane leak inspection and repair standards, weakening carbon pollution emission standards for new power plants – would all result in increased carbon pollution compared to the regulatory regimes they are designed to replace.

Did you consider the potential for a coastal property real estate crash and the associated economic costs when considering these proposals? If so, please cite to me where in these proposed rules or in the accompanying regulatory impact analysis this is discussed. If not, why did you not consider this serious economic risk when designing these proposals?

b. AO/OW/OAR: The second of these economic risks is the risk of a carbon bubble. This is what Mark Carney, the Governor of the Bank of England has to say: "The exposure of UK investors, including insurance companies, to [stranded assets] is potentially huge."

This is what the head of insurance supervision at the Bank of England has to say: "As the world increasingly limits carbon emissions, and moves to alternative energy sources, investments in fossil fuels and related technologies [...] may take a huge hit."

This is what academics at University College London have written:

"Our results suggest that, globally, a third of oil reserves, half of gas reserves and over 80 per cent of current coal reserves should remain unused from 2010 to 2050 in order to meet the target of 2 degrees Celsius."

This is what academics at Cambridge have written:

"Our conclusions support the existence of a carbon bubble that, if not deflated early, could lead to a discounted global wealth loss of US\$1-4 trillion, a loss comparable to the 2008 financial crisis."

Many of the rollbacks you've proposed since assuming the helm at EPA – freezing automobile fuel economy and greenhouse gas emissions standards, replacing the Clean Power Plan, weakening methane leak inspection and repair standards, weakening carbon pollution emission standards for new power plants – would all result in increased carbon pollution compared to the regulatory regimes they are designed to replace.

Did you consider the potential for a carbon bubble and the associated economic costs when considering these proposals? If so, please cite to me where in these proposed rules or in the accompanying regulatory impact analysis this is discussed. If not, why did you not consider this serious economic risk when designing these proposals?

179. *OP/ORD:* Are there any circumstances under which written EPA protocols for selecting members of EPA's various science advisory boards should be departed from? If so, please

describe the circumstances that would justify departing from established member selection protocols.

180. *OCSPP:* Dr. Nancy Beck is currently overseeing the implementation of the reformed TSCA legislation. Dr. Beck has developed her own systematic review process for assessing the quality of the scientific studies upon which it will rely to determine the safety of the chemicals it reviews. The first chemical to undergo a risk evaluation under the reformed TSCA is Pigment Violet 29 (PV29). In its draft risk assessment, EPA concluded that PV29 is safe.

EPA's draft risk assessment's conclusion that PV29 is safe relied in part on two studies by German chemical giant BASF. These studies were conducted in 1976 and 1978. Using Dr. Beck's systematic review process, EPA concluded that these two studies were of "medium" quality. Yet BASF, in a regulatory filing with the European Chemicals Agency, admitted that these same studies were "not reliable."

- a. Should EPA's risk assessments be relying on studies whose own industry sponsors admit that they are "not reliable?"
- b. Why was Dr. Beck allowed to create her own systematic review process for the TSCA program?
- c. Why was EPA's own IRIS-developed systematic review process, which has been positively reviewed by the National Academies, not adopted for use for the TSCA program?
- d. Will you commit to me that going forward, the TSCA program will not use any systematic review process that has not first been examined by the National Academies?
- 181. *OAR:* In a final rule published in 2014, EPA approved a new cellulosic biofuel pathway that allows producers additional options to comply with the standard. EPA deemed that charging electric vehicles with renewable electricity derived from cellulosic biogas would create cellulosic biofuel credits, and several companies applied to EPA to get approval under this new pathway (known as the "e-rin" pathway). EPA in late 2016, held an additional comment period to identify and solicit comment on how to administer the e-rin pathway to avoid double counting as well as address other complexities. Since the 2016 rule, the EPA has over two years to review several pending applications and has yet to take any administration action. In my meeting with you, you discussed that there are several outside groups interested in generating the RIN and thus it's a complicated issue. I agree, but that doesn't mean that EPA should not put dedicated staff toward figuring out this issue and providing guidance on how to develop e-rins under the RFS.
 - a. Has EPA reviewed the comments from the 2016 proposed rule on how to successfully administer this pathway? If so, why has EPA not taken an action in 2 years to clarify necessary changes if they are needed?
 - b. If the pathway was originally approved in 2014 and EPA has already finished a public comment on how to administer the pathway, why has EPA not been able to develop a mechanism to administer the program in nearly 5 years?

- c. Do you commit to having staff work on developing a credit transfer program, to avoid double counting, and review the 40+ applications that have been pending for e-rins at EPA since 2016?
- 182. *OAR*: EPA has an important role in supporting the growth of biofuels, thereby adding diversity to the nation's fuel mix within the transportation sector. EPA's work is especially important within the advanced and cellulosic fuels markets where advances in technologies have the potential to bring important new low-carbon fuels to the market.

Last August, when you testified before this Committee, you committed to providing "certainty within EPA programs" in order to be a better partner with the private sector, as appropriate, in order to provide the clarity and transparency it needs to grow and create jobs.

While work on several efforts related to biofuels are currently being processed within EPA, one effort which remains unresolved and where uncertainty remains is the work related to biointermediates.

As you may know, the Environmental Protection Agency initiated work to address this topic via EPA-HQ-OAR-2016-0041-0196 in May of 2015. A proposed rule was published in November, a public meeting was held in December 2016, and the comment period closed in February 2017. While additional issues beyond the topic of biointermediates were included in EPA-HQ-OAR-2016-0041-0196, a wide range of entities and comments were submitted in support of providing certainty for biointermediates.

To date though, action on the specific issue of biointermediates has not moved forward and the lack of progress has added uncertainty into this segment of the renewable transportation fuel market.

In the proposed rule, the Environmental Protection Agency noted that it may be "preferable for economic or practical reasons for renewable biomass to be subjected to substantial pre-processing at one facility before being sent to a different facility where it is converted into renewable fuel." The Environmental Protection Agency also noted that biointermediates will "likely provide an important component of the growth in renewable fuel production in the future, particularly for advanced and cellulosic biofuels," and proposed "changes in the RFS regulations to clearly specify requirements that apply when renewable fuel is produced through sequential operations at more than one facility."

- a. First, given that the Environmental Protection Agency issued a proposed rule regarding biointermediates in 2016 and has since received and reviewed more than forty comments relating to the biointermediates proposal, has the Environmental Protection Agency considered moving forward and providing certainty on the matter of biointermediates in 2019?
- b. Second, should you be confirmed, can you provide any certainty whether the Environmental Protection Agency will successfully incorporate biointermediates into one of the pending proposed rules in the unified regulatory agenda on renewable fuels such as the pending rulemaking which proposes modifying the applicable volume targets for cellulosic biofuel, advanced biofuel, and total renewable fuel for the years 2020 2022, especially since the abstract for that

rule states that it will cover volume modifications, as well as "several regulatory amendments designed to provide clarity and increase opportunities for renewable fuel production."

- 183. *OP*: Do you think there should be a standardized social cost of carbon? Is the social cost of carbon greater than zero dollars per metric ton? If so, what is the most accurate social cost of carbon in 2018 and what is the best way to calculate this number?
- 184. AO/OAR: Do you agree with the majority of scientists that anthropogenic climate change is happening?
 - a. If so, do you agree there are costs to inaction as well as costs to action?
 - b. Do you believe the American public should have to pay for the costs of inaction—the storm damaged homes, lost crops, and failing fisheries?
 - c. Do you believe that these costs of inaction have a value that can be calculated? Is the value greater than zero?
- 185. *OP*: A 2007 legal challenge prompted the courts to direct the government to further quantify the costs and benefits of a ton of carbon pollution in federal government rulemakings. Specifically, the U.S. Court of Appeals for the 9th Circuit agreed that in quantifying the benefit of cutting carbon pollution but admonished that the value is "certainly not zero." The Court asked National Highway Traffic Safety Administration to do a new rule that addressed this issue. This court decision led the Bush and Obama Administrations to further refine a value for the SCC. Do you reject this decision? If so, please explain why and how that affects how you approach your responsibilities.
- 186. *OP*: In 2009, the Obama administration created an interagency working group (IWG) in an effort to create a governmental value for the social cost of carbon, which based its calculations on peer-reviewed economic models and expert opinions. The models included in their analysis were the Dynamic Integrated Climate-Economy (DICE)¹⁷, Policy Analysis of the Greenhouse Effect (PAGE)¹⁸, Climate Framework for Uncertainty, Negotiation and Distribution (FUND)¹⁹, and World Induced Technical Change Hybrid (WITCH)²⁰ models. The IWG was comprised of scientists and economists from the Office of Management Budget, the Council for Environmental Quality, the National Economic Council, the EPA, the U.S. Department of Agriculture, Energy, Transportation, and Treasury.
 - a. Can you discuss whether you think the models used by the IWG are appropriate and credible tools for calculating the social cost of carbon?
 - b. Can you comment on whether the IWG was comprised of the right governmental stakeholders and actors?

¹⁶ Center for Biological Diversity v. National Highway Traffic Safety Administration, 508 F.3d 508, U.S. Court of Appeals for the 9th Circuit (2007), available at [HYPERLINK "http://caselaw.findlaw.com/us-9th-circuit/1024716.html"].

¹⁷ Dynamic Integrated Climate-Economy model (DICE), http://www.econ.yale.edu/~nordhaus/homepage/dicemodels.htm

¹⁸ Policy Analysis of the Greenhouse Effect (PAGE), http://climatecolab.org/resources/-/wiki/Main/PAGE

¹⁹ The Climate Framework for Uncertainty, Negotiations and Distribution (FUND), http://www.fund-model.org/

²⁰ World Induced Technical Change Hybrid model (WITCH), http://www.witchmodel.org/

- 187. *OP*: On March 28, 2017, the President issued a Presidential Executive Order on Promoting Energy Independence and Economic Growth, which disbanded the IWG, withdrew the guidance it issued, and reverted to OMB Circular A-4 of September 17, 2003 (Regulatory Analysis). This in effect requires each agency to estimate the value of changes in greenhouse gas emissions resulting from regulations. Do you believe the regulatory process will be more effective and efficient in the absence of unified guidance on how to monetize the value of changes in greenhouse gas emissions? How does this advance the value of regulatory certainty you claim to support?
- 188. *OP*: Part of the social cost of carbon calculation assumes a value for discount rates. The IWG after reviewing past OMB guidance recommended using a 3% discount rate²¹.
 - a. Do you have an opinion on what the discount rate value should be when calculating the social cost of carbon?
 - b. Scientific research has found that it would be more accurate to use a declining discount rate instead of a fixed one. Do you agree that a declining discount rate would be more accurate?
 - c. Do you have an opinion on what the discount rate value should be used for intergenerational impacts?
 - d. Why should one generation discount the impact of harms upon another generation at all?
- 189. *OP/OITA*: Is it appropriate for a cost-benefit analysis to consider the harm caused in other countries from pollution emitted in the United States? If not, please explain why.
- 190. *OITA/OW:* What projects, both domestically and internationally, are EPA staff and contractors engaged in to combat marine debris?
- 191. *OW/OLEM/OCSPP*: Is EPA undertaking any studies or analyses investigating the public health risks of microplastics, microfibers, and other plastic waste?
- 192. *OW/OLEM:* What opportunities exist through the EPA's Clean Water Act and/or Resource Conservation and Recovery Act authorities to improve waste management, study and mitigate the effects of plastic waste pollution in waterways and the ocean, and support waste reduction, improved recycling, and cleanup efforts?
- 193. *OITA/OW/OLEM:* Does EPA require any additional authorities to export its technical expertise and best practices to foreign partners and priority countries in need of assistance in improving its waste management practices to minimize marine debris?
 - a. Can EPA currently undertake its own bilateral discussions, or must it go through the State Department or USAID to develop these relationships?

²¹ Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document*, pp. 15–16.

- 194. *OCSPP:* When approving chemicals and other components or end plastic products, does EPA currently consider the longevity of those materials in the environment and the potential harm they can cause as they degrade?
- 195. *OITA/OW:* Does EPA regularly participate in the Interagency Marine Debris Coordinating Committee? If so, who attends from EPA?
- 196. *OITA*: What role have you personally and as a representative of the U.S. taken in international, multilateral gatherings, like the G7, G20, ASEAN, UNEP, and other summits, to make marine debris a priority topic? Have any new partnerships, agreements, or knowledge exchanges come out of these meetings?
- 197. *OW*: In May 2015, EPA released a 423-page technical support document outlining the legal and scientific basis for the agency's Clean Water Rule. Will EPA release a similar document to support its legal reasoning behind the agency's new proposed "Waters of the U.S." definition, especially given the definition depends solely upon Justice Scalia's opinion in *Rapanos*, a position without judicial precedent?
- 198. *OW*: Will EPA extend the comment period on its new proposed definition of "Waters of the U.S." given the partial government shut down? If so, for how long and when will this be announced?
- 199. *OW*: Why was only one listening session scheduled? How was Kansas City, KS selected as the site of this one listening session?
- 200. *OW*: Has EPA revisited its estimate of the benefits of wetland mitigation since its June 2017 economic analysis for the proposed definition of "Waters of the U.S."? If not, does it have plans to do so before the rule is finalized?

Senator Wicker:

- 201. *OW*: Under the Clean Water Act, EPA has jurisdiction over the discharge of substances into a water of the United States. As such, the agency has oversight of offshore aquaculture projects, along with other agencies such as the U.S. Army Corps of Engineers and NOAA. Will you commit to working with the agencies that are responsible for regulating offshore aquaculture to ensure that this industry has greater regulatory certainty in federal waters?
- 202. *OCSPP:* The Pesticide Registration Improvement Act (PRIA) was first enacted in 2004 to provide dedicated funds to EPA to evaluate the safety and efficacy of antimicrobials, sanitation products, and pesticides. This legislation has been reauthorized twice by unanimous consent or voice votes in the House and Senate, which indicates that there is strong bipartisan support and a lack of controversy for this statute. However, the most recent reauthorization failed to reach the President's desk before the end of the 115th Congress.
 - a. How important is PRIA to EPA's mission?

b.	If Congress does not reauthorize PRIA, what will the impact be on EPA staffing and budgets? What will the impact be on manufacturers of these products whose EPA registration is effectively a license to operate?
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